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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-475

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
Appellees.

On Appeal from the United States District Court for the Western District of Arkansas, Fort Smith Division

## JURISDICTIONAL STATEMENT

**Of Bowman Transportation, Inc.**

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Appellants,

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ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
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On Appeal from the United States District Court for the Western District of Arkansas, Fort Smith Division

## JURISDICTIONAL STATEMENT

**Of Bowman Transportation, Inc.**

### OPINIONS BELOW

The Opinion of the Three-Judge District Court was filed September 11, 1973 (App.J, 739),[1] and is reported in 364 F.

[1] Since three motor carrier defendants, a group of 41 intervenor shippers, the Interstate Commerce Commission and United States have filed separate appeals from the judgments of the Three-Judge District Court, a separate Appendix has been printed containing all pertinent orders to avoid duplication. The appendix references in this Jurisdictional Statement will refer to the appendix numbers in the printed appendix, the first page of which is 93. Page numbers following the alphabetical appendix refer to the first page number of that appendix.

Supp. 1239. The Report of the Interstate Commerce Commission (ICC), served January 24, 1972, is printed at 114 M.C.C. 571-796 (App.B, 363). The Opinion of the Three-Judge District Court denying the Motion of the United States and ICC to amend the judgment to provide for remand to the Commission for further proceedings instead of permanently enjoining administrative consideration was entered on October 4, 1973 (App.N, 307), and is reported in 364 F. Supp. 1266. The importance of a complete record in this appeal arises, in part, from the mechanical adoption verbatim by the District Court of findings of fact and conclusions of law prepared by the plaintiffs below.[2] Timely appeals were taken and separate Jurisdictional Statements are being filed by each appellant.

## JURISDICTION

This action was originally filed by competing motor carrier plaintiffs[3] to set aside an order of the ICC granting motor carrier operating authority to the three motor carrier appellants under 49 U.S.C.A. 307. The order and judgment of the Three-Judge District Court, entered on September 11, 1973,[4] improperly arrogated to itself a decision committed by statute to the ICC, by setting aside the Commission order of approval and enjoining any further proceedings by the Commission. On September 17, 1973, the United States and ICC filed a motion to amend the judgment to provide for remand to the Commission for further proceedings on the ground that the judgment entered was beyond the jurisdiction of the Court. The motion was denied by the District Court on October 4, 1973 (App.N, 807). Bowman Transportation, Inc. (Bowman) filed notice of appeal

[2] Motor carrier competitors which unsuccessfully protested applications of the carrier appellants before the ICC.

[3] Under 28 U.S.C.A. 1336, 1398, 2284 and 2321-2325.

[4] App. J. 739.



from the original District Court order on October 2, 1973 (App. M, 803) and notice of appeal from the original and subsequent order on October 19, 1973.[5] Timely separate appeals were filed by each of the other appellants.

The jurisdiction of this Court to review the judgments of the District Court on direct appeal is conferred by 28 U.S.C.A. 1253 and 2101(b). **American Trucking Associations, Inc. v. Atchison, Topeka & Santa Fe Ry. Co.,** 387 U.S. 397, 18 L. Ed. 2d 847, 87 S.Ct. 1608, reh. den. 389 U.S. 889, 19 L.Ed.2d 197, 88 S. Ct. 11, 12; **American Trucking Associations, Inc. v. United States,** 364 U.S. 1, 4 L.Ed.2d 1527, 80 S.Ct. 1570; **United States v. Dixie Highway Express, Inc.,** 389 U.S. 409, 19 L.Ed.2d 639, 88 S. Ct. 539.

## THE STATUTES INVOLVED

The statutes involved[6] are set out in the joint Appendix (A. 93). The principal statute involved is § 207(a) of the Motor Carrier Act, 49 U.S.C.A. 307(a).

## THE QUESTIONS PRESENTED

The basic questions here involved are as follows:

1. Did the Three-Judge Court err by mechanically adopting verbatim an order prepared by the parties seeking judicial review of an administrative agency which reversed

[5] Under 28 U.S.C.A. 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts and Supreme Court Rule 10.

[6] 49 U.S.C.A., preceding § 1 note, § 301 note, § 901 note and § 1001 note, §§ 17(4) and (5); 307(a) and (b); 5 U.S.C.A. 556, 557 and 706; 28 U.S.C.A. 2284(1) and (5).

the expert agency decision, refused to remand and enjoined any further agency consideration in the case, thereby substituting the judgment of the Court for the agency, which had Congressional responsibility therefor?

2. Can a Three-Judge District Court lawfully set aside and enjoin an order of the Interstate Commerce Commission granting an extension of a motor carrier certificate on the ground the Court does not agree with the order or may consider the evidence would warrant a different conclusion?

3. Is a carrier which withdrew from a motor carrier proceeding and which did not exhaust its administrative remedies entitled to intervene and raise an issue related to tacking of operating authority acquired by applicant during pendency of an extension proceeding, where the only justification for such intervention is the subsequent acquisition of new rights by the petitioning carrier?

4. Whether Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration. If so, when does such an administrative action reach that point?

5. Can such an issue be raised for the first time on review after the action has been administratively concluded and where multiple time extensions were requested and granted to the parties?



## STATEMENT

### I

**The Three-Judge District Court Erred in Reversing the Expert Decision of an Administrative Agency, in Refusing to Remand the Case to That Agency and in Abdicating Its Judicial Function by Mechanically Adopting Verbatim Proposed Findings and Conclusions by One of the Parties Before the Court.**

This proceeding before the ICC was commenced by 20 substantial motor carriers filing applications under 49 U.S.C.A. 307 seeking extensions of their operating rights. Each applicant represented and verified to the Commission that a public need existed for additional motor carrier operations principally between points in the Southeast and the Southwest. To develop an orderly procedure, the Commission consolidated 10 of the applications for hearing. The proceeding admittedly involved "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before the Commission".[7]

Following 147 days of oral testimony from 1,009 witnesses, who presented 1,989 exhibits, many of which were several hundred pages in length, consideration of the Recommended Report of the Examiners, and four separate sets of briefs[8] from the par-

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[7] **Herrin Transportation Company Extension, Atlanta, Georgia,** 114 M.C.C. 571, served January 24, 1972, which, as noted, is the subject Commission Order (App. B, 101).

[8] All the issues raised and involved in the administrative proceedings were briefed and re-briefed by the parties in (1) original briefs filed by substantially all the parties; (2) exceptions and supplemental exceptions to the Examiners' Report and replies thereto; (3) petitions for reconsideration of the Report and Order of the Commission and replies thereto; (4) petitions under Rule 102 and replies thereto.

ties, the Commission issued one of the most thorough and best documented orders in Commission history, containing 225 pages, including 120 chart pages carefully summarizing the transcript of 23,423 pages. After the Commission order, the plaintiffs selected the court[9] and filed their complaint seeking judicial review. The entire record was certified by the Secretary of the ICC to the Clerk of the District Court in boxes which were stored in the basement of the Federal Building at Fort Smith, Arkansas, in which condition, almost, if not all remained during ostensible judicial review.[10] The District Court arrogated to itself the right to decide dogmatically the issue of public convenience and necessity, i.e., whether additional motor carrier operating rights should be issued, which is the statutory duty and responsibility of the ICC.

At the time of submission, the Three-Judge District Court requested the parties to file a proposed order. All did so. The Court then completely abdicated its judicial responsibility and proceeded to mechanically copy verbatim the plaintiff's proposed findings and conclusions. In the joint Appendix we have numbered the paragraphs of the Court order of September 11, 1973 to correspond with the numbers in the plaintiff's proposed find-

[9] Under 28 U.S.C.A. 1398, this action could be brought in the judicial district of the residence or principal office of any of the parties bringing the action. Of the 19 plaintiffs, only 2 claimed residence in the district where the suit was filed. Arkansas-Best Freight System, Inc. (ABF) and Mercury Motors, Inc. (Mercury). ABF filed a protest to the Bowman application, but withdrew. Mercury operated over regular routes between Memphis and Fort Smith by way of Little Rock. It protested the Bowman application, but the application was amended to exclude Fort Smith.

[10] See Affidavit of Robert L. Jones, Esq., Fort Smith, Arkansas, attached as Appeidix A. We also invite official inspection of the record transmitted to the Clerk of the Supreme Court by the Clerk of the District Court in substantially the same condition and some in unopened containers used by the Secretary of the ICC in transmitting the record to the Clerk of the District Court.



ings and conclusions.[11] This is not the judicial review contemplated and required, particularly when reviewing "the most extensive record ever developed" in such a proceeding. This raises a novel issue of judicial administration, i.e., the verbatim adoption by a Three-Judge District Court of proposed findings and conclusions by one party, now squarely presented for the first time for decision by the Supreme Court. In the determination of this issue, the Court may well be guided by the following authorities and well established principles:

(a) **In the context of a three-judge district court review of an administrative order, all three judges must fully perform the judicial function.**

In **Ayershire Collieries Corp. v. United States** (1947), 331 U.S. 132, 138, 91 L.Ed. 1391, 73 S.Ct. 1168, the Supreme Court held that a district court's judgment was void where only two of the three judges participated in determination of the case due to illness of the third. Here, the judicial function was exercised only through copying verbatim an order prepared by the plaintiffs.

(b) **"Fairness and minimum requirements of due process require that findings and conclusions be those of the court and not of counsel and that 'it must be the independent and solitary decision of the judge.' "**

This is the language of the then Circuit Judge (now Justice) Blackmun in **Bradley v. Maryland Casualty Co.** (8th C.A. 1967), 382 F. 2d 415, 422, where, in conclusion, the Court fixed the guideline (here violated) as follows:

"We venture to suggest that if, because of prevailing custom, or pressure of work, or a case's technical nature, or

[11] The Court admitted the plaintiff's proposed order was "adopted by the Court as hereinafter set forth".

> for other reasons, counsel must be asked to assist in the preparation of findings and conclusions, it is better practice to make this request at or soon after the submission of the case and prior to decision and to make it of both sides. 5 Moore's Federal Practice (2d Ed. 1966), Par. 52.06(3), p. 2665. Then the court may pick and choose and temper and select those portions which better fit its own concept of the case."

Here, there admittedly was no "picking, choosing, tempering or selection." Instead, the arbitrary mechanical acceptance of the order prepared by plaintiff advocates led the Court to the errors herein specifically noted.

(c) **For purposes of review "maximum doubt" is cast upon findings of fact and conclusions of law mechanically and erroneously adopted by the court below.**

In **Roberts v. Ross** (3rd C.A. 1965), 344 F.2d 747, the Court held and declared:

> "But counsel who is called upon to articulate and write out the findings and conclusions must do so without any knowledge of the fact findings and reasoning processes through which the judge has actually gone in reaching his decision.
>
> We strongly disapprove this practice. For it not only imposes a well-nigh impossible task upon counsel but also flies in the face of the spirit and purpose, if not the letter, of rule 52(a).
>
> Findings and conclusions prepared ex post facto by counsel, even though signed by the judge, do not serve adequately the function contemplated by the rule."

See also **In Re Las Colinas, Inc.** (1st C.A. 1970), 426 F. 2d 1005; **Louis Dreyfus & Cie v. Panama Canal Co.** (5th C.A. 1962), 298 F. 2d 733.



(d) **The functions of an ardent advocate and an impartial judge are essentially inconsistent. Findings "mechanically adopted" are not "the product of a disinterested judicial mind" essential to an evaluation of the court's reasoning.**

In **United States v. El Paso Natural Gas Co.**, 376 U.S. 651, 656, 12 L.Ed.2d 12, 84 S. Ct. 1004, the Supreme Court emphasized that findings and conclusions "drawn with the insight of a disinterested mind are more helpful" than those "mechanically adopted" which do not reveal the discerning line for decision of the basic issues in the case.[12]

Findings and conclusions prepared by counsel, even though signed by the Court, do not adequately serve the function contemplated and required by Federal Rule 52(a), particularly where the order prepared and proposed by one of the parties is simply copied verbatim. The purpose of Rule 52 is to require the Court to formulate and articulate its findings of fact and conclusions of law in the course of its determination of the case

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[12] In **United States v. El Paso Natural Gas Co.** at 376 U.S. 656, fn. 4, the Supreme Court quoted Judge J. Skelly Wright of the Court of Appeals of the District of Columbia as follows: "Who shall prepare the findings? Rule 52 says the court shall prepare the findings. 'The court shall find the facts specially and state separately its conclusions of law'. We all know what has happened. Many courts simply decide the case in favor of the plaintiff or the defendant, have him prepare the findings of fact and conclusions of law and sign them. This has been denounced by every court of appeals save one. This is an abandonment of the duty and the trust that has been placed in the judge by these rules. It is a noncompliance with Rule 52 specifically and it betrays the primary purpose of Rule 52—the primary purpose being that the preparation of these findings by the judge shall assist in the adjudication of the lawsuit." **Seminars for Newly Appointed United States District Judges** (1963), p. 166. See also **United States v. Howard** (3rd C.A. 1966), 306 F.2d 373; **Industrial Building Materials, Inc. v. Interchemical Corp.** (9th Cir. 1970), 437 F.2d 1336; **Louis Dreyfus & Cie v. Panama Canal Co.** (5th C.A. 1962), 298 F.2d 733; **Chicopee Mfg. Corp. v. Kendall Co.** (4th C.A. 1961), 228 F.2d 719; **United States v. Forness** (2d C.A. 1942), 125 F.2d 928.

and its decision making process. Here, the Court did not review the record. Frankly, in view of its magnitude, it would be asking too much of any court. This is one of the reasons supporting the rule of limited judicial review and the requirement to remand the proceedings if, and when, error is found, both of which requirements were here violated. But where issues were in sharp conflict, it is not asking too much to request the Court to review and consider the record or the Commission orders as to those aspects before arbitrarily and blindly adopting the factual argument of one of the parties. The subject order demonstrates a completely unbalanced consideration of the evidence which is the understandable result of mechanically adopting findings and conclusions which are the product of zealous counsel whose duty, as advocates, was to present all their contentions in the light most favorable to their clients.

## II

**The Three-Judge Court Exceeded Its Limited Review Functions Contrary to Well Established Supreme Court Precedent by Adopting the Plaintiffs' Proposed Order Which**

### (a) Weighed the evidence before the Commission

In the Court below, the plaintiffs argued that the Commission erred in according more weight to the transit time studies of more than 200 shipper witnesses than it did to the transit time studies of 14 interested motor carrier protestants (37).[13] The Court's (plaintiffs') order quoted at length from the Examiners' Report with respect to transit time and omitted entirely the findings of the Commission on this issue. Adopting the plaintiffs' order, the Court below held that (30):

[13] Figures in parentheses refer to paragraph numbers of the plaintiffs' proposed order and the order of the Three-Judge Court entered September 11, 1973 (App. I, 697 and J, 739).



> "These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants and that protestants' service was, on the whole, reasonably expeditious."[14]

That representative statement is factually incorrect, legally impermissible and directly contrary to the factual finding of the Commission. It is simply the plaintiffs' argument "mechanically adopted". What the Commission actually found and stated with respect to the transit time studies is set out in Appendix B attached (114 M.C.C. 596, 599, 600). The Court (plaintiffs') order does not discuss these specific findings of the Commission which were ineluctably supported by the record evidence. Additionally, the Court (plaintiffs') order omits entirely any consideration of the specific Commission finding that (114 M.C.C. 596):

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive."

and that (114 M.C.C. 597):

> "Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is

[14] This is in direct conflict with the admission in the Court's (plaintiffs') order (19) that "most shippers generally expressed dissatisfaction with inconsistent and excessive transit times". The Court (plaintiffs) do not attempt any explanation of this dichotomy.

a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing."

Further (114 M.C.C. 597):

"Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service."

and that (114 M.C.C. 597):

"Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States."

The weight accorded to the various transit time studies and the reasons therefor were clearly stated by the Commission. All the documents are summarized in the Commission order, particularly Appendix E thereto.

650, or approximately 80% of the 824[15] shipper witnesses who testified in this proceeding had specific complaints of inadequate and inconsistent transit time and expressed a dire need for reliable and consistent service between the Bowman authorized and proposed points.

The supporting shippers and receivers testified that as a result of inconsistent and excessive transit times experienced on a recurring basis, their business has been materially hampered by an inability to

[15] This represents the 933 witnesses who testified less the 109 which supported the application of Roadway, which was denied.



—reduce inventories where their storage space and investment capial were limited.

—maintain production schedules where they are dependent upon consistent service.

—give timely delivery or serve customers on special orders, for example, on special and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timely deliveries are not effected.

—take short term discounts.

—obtain job site delivery to metropolitan areas where construction crews and production lines frequently are awaiting arrival of goods and supplies.

—carry in stock the multiple sizes, colors and grades of such items as carpets, textiles, tile and paint, thereby making it necessary to order from brochures or samples and to depend upon expeditious, consistent motor carrier service.

—order from preferred markets.

Additionally:

—the fact that quicker and more dependable service is available between the west coast and Texas points, militates against the southern market.

—installations cannot be made in the time and manner required.

—companies have been unable to advise customers as to delivery of special orders of merchandise not in stock.

—many companies have been required to pay higher or premium prices in order to insure a reasonable delivery time from now preferred markets.

The District Court judicially held that in the study and application of such transit time exhibits, the Commission, as a matter of law, must give greater weight to the records of protestant motor carriers, a position which the Commission previously had rejected in **Strickland Transportation Company,** 77 M.C.C. 655, 663, stating:

> "We cannot accept the general proposition that a carrier's records are accurate and that a shipper's records are not, or that the carrier's records are more likely to be accurate than the shipper's."

It is well settled that reviewing courts should not weigh the evidence. As was recognized in **Arrowhead Freight Lines v. United States,** 115 F.Supp. 537, 544 (S.D. Cal. 1953):

> "**To consider the weight of the evidence before the Commission,** the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made in other cases, **is beyond our province.** Virginia R. Co. v. United States, 1926, 272 U.S. 658, 663, 47 S.Ct. 222, 224, 71 L.Ed. 463; see also Universal Camera Corp. v. N.L.R.B., 1951, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 1946, 327 U.S. 515, 535-536, 66 S.Ct. 687, 90 L.Ed. 821; Rochester Tel. Corp. v. United States, 1939, 307 U.S. 125, 139-140, 59 S.Ct. 754, 83 L.Ed. 1147; I.C.C. v. Union Pac. R.R. Co., 1912, 222 U.S. 541-547-548, 32 S.Ct. 108, 56 L.Ed. 308." (Emphasis supplied.)

The Court's (plaintiffs') suggestion that Bowman transit time studies were considered to support the feasibility of its proposal and rejected to support the challenge is incorrect. The Commission carefully summarized the exact results of the studies (114 M.C.C. 586) and considered them with other factors, including highway conditions, and applied to all this evidence



the weight it concluded appropriate. The weight to be accorded the evidence is for the Commission and not for the courts, absent arbitrary action. **Patterson v. United States and Interstate Commerce Commission,** 178 F.Supp. 771 (1959); **Riss & Co. v. United States,** 100 F.Supp. 468, 484; **Carolina Freight Carriers v. United States,** 297 F.Supp. 848; **Universal Camera Corp. v. N.L.R.B.,** 340 U.S. 474, 488, 95 L.Ed. 456, 71 S.Ct. 222; **Mississippi Valley Barge Line Co. v. United States,** 292 U.S. 282, 286, 78 L.Ed. 1260, 54 S.Ct. 692.

The Court's (plaintiffs') order goes to the extreme of holding that the plaintiffs who selected the time periods and prepared and presented their transit time studies were deprived of "an opportunity to defend their propriety or correct the alleged deficiencies" (41). Any review of the record would have exposed that error. The hearings continued for 147 days. None of the plaintiffs sought "to correct" the deficiencies and instead of remanding the case, the Court enjoined the Commission from further proceedings, thus giving full effect to the plaintiffs' argument and substituting its judgment for that of the Commission upon whom the statutory responsibility is supposed to rest.

The Court (plaintiffs) contends that if "standards" relating to a consideration of transit time studies are to be changed "the parties were entitled to reasonable notice and an opportunity to confirm to such changes" (40). What opportunity is afforded under the subject Court order which arbitrarily terminated the most extensive motor carrier record ever developed? How can the action of the Three-Judge Court, below, in weighing the evidence, ignoring the Commission's findings, adopting verbatim the arguments of plaintiffs and giving complete effect to the rejected findings of the Examiners be reconciled with the rule established for review of Commission orders succinctly stated by Justice Brandeis in **Virginia R. Co. v. United States,** 272 U.S. 658, 71 L.Ed. 463, 468, 47 S.Ct. 222, that:

"This court has no concern with the correctness of the Commission's reasoning, with the soundness of its decision, or with the alleged inconsistency with findings made in other proceedings before it."

Accord: See **Interstate Commerce Commission v. Union P. Ry. Co.**, 222 U.S. 541, 56 L.Ed. 308, 32 S.Ct. 108.

(b) **Adopted the errors of the Examiners (1) in considering all the applications collectively and (2) in relation to the commodities shipped to the exclusion of the territories involved.**

Of the 31 pages and 56 paragraphs contained in the Court's (plaintiffs') findings of fact, 18 pages and 33 paragraphs deal exclusively with a preliminary statement and the rejected Examiners' Report. The Examiners considered all applications collectively and classified the freight into 45 categories. The District Court erroneously stated that this "method used by the Examiner was consistent with the method used by the applicants and protestants in their respective abstracts of the evidence presented to the Examiners" (20). That statement is incorrect and had the Court reviewed the record and exceptions, it would have found, as did the Commission (114 M.C.C. 574) that:

"Collectively, applicants except to the basic approach taken by the examiners in assertedly considering those applications on the erroneous concept that either all must be granted or all must be denied. It is averred that the examiners should have evaluated, and made findings and conclusions relating to, each application as a separate and independent matter, and that the supporting testimony should not be treated only in relation to the commodities shipped to the substantial exclusion of the territories and points involved."

Bowman and other applicants strongly excepted to the Examiners' approach, pointing out there was no question that general commodity traffic was involved and that specific findings were required as to each applicant. The Court (plaintiffs) adopted the error of the Examiners, considered the case on a *de novo* basis and, contrary to prior judicial admonition, substituted its judgment for that of the Commission. This was error. **Patterson v. United States and Interstate Commerce Commission**, 178 F.Supp. 771 (1959); **Willis Shaw Frozen Express, Inc. v. United States,** 256 F.Supp. 257 (1966).



(c) **The Court (plaintiffs) adopted the plaintiffs' claim that approval would expose plaintiffs' traffic to potential diversion and ignored the Commission's conclusion that "the gains to be derived by the shipping public in general far outweigh any adverse effect . . . any . . . protestant may experience." (144 M.C.C. 611.)**

The Court (plaintiffs) discussed in detail the evidence presented by protestant motor carriers (plaintiffs) of a potential diversion of traffic and adopted in full the plaintiffs' claims, but failed to refer to the Commission consideration of this testimony together with that of the 824 shipper witnesses who related specific complaints of inadequate and inconsistent service and expressed a dire need for the service proposed. That testimony is completely ignored in the Court's (plaintiffs') order. Throughout the Court (plaintiffs) discuss what the Examiners found without reference to the Commission discussion of those facts and the ultimate conclusions found by the Commission. We simply ask this Court to read the District Court Order and the Order of the Commission (114 M.C.C. 571) and then make a determination whether a fair consideration was accorded and whether justice prevailed in this proceeding below.

The Court (plaintiffs) argued that (45):

"The decision omitted entirely the examiners summary of all evidence presented by six carriers that had protested

only the application of one of the carriers that had failed to file exceptions."

The facts are, the Commission specifically stated (114 M.C.C. 598):

> "The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary."

The Examiners recommended the application of Roadway Express, Inc. be denied. It filed no exceptions and the recommended denial became final under Commission Rule 97. The 6 carriers omitted protested only the Roadway application. Rule 247(d)(2) of the Commission rules provides that failure to timely protest is a waiver of opposition and participation in the proceedings.

The Court (plaintiffs) erroneously stated that the Commission refused to "evaluate the effect of this expanded service" arising from extensions or expansions of operating authority "subsequent to the close of the hearing" (46). This is incorrect. To the contrary, the Commission specifically stated (114 M.C.C. 576):

> "As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. West Brothers, Inc., Extension—Baton Rouge, La., 108 M.C.C. 485, 489 (1969); and Ayers Extension—Cheyenne, Wyo., 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations."



Additionally, the Examiners or the Commission, or both, made specific reference to 23 separate orders approving the extension or merger of operating rights, a list of which is attached as Appendix C. These facts would have been apparent to the Court from a study of the Commission order.

The Court (plaintiffs) stated (48) that approval would result in a deterioration of service, primarily to small communities proposed to be traversed. If the Court had simply examined the Commission order (114 M.C.C. 777), it would have found that the claim was made by Campbell-66, one of the plaintiff protestants, and it would further have noted what the Commission found and what the District Court omitted, that (114 M.C.C. 777:

> "Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Misissippi, which are not proposed to be served directly by these applicants. **However, in this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender it freight for certain Mississippi points it is authorized to serve."** (Emphasis supplied.)

Nowhere is it suggested that the Commission order was not supported by substantial evidence. In fact, 933 public witnesses admittedly testified to a public need for the proposed service which they declared was essential to the proper operations of their businesses. The order of the District Court is in irreconcilable conflict with its conclusion that:

> "Generally an order of such an agency will be sustained if it is within the agency's statutory powers and is based

on appropriate findings which in turn are supported by substantial evidence."

After 147 days dedicated to oral hearings and to compiling a record never equalled in Commission motor carrier history, we are confronted with an arbitarary judicial review of the record and the Commission order based thereon without the respect of an examination of that record by the Court.

## III

**The Court (Plaintiffs) Concluded That the Petition for Intervention and Reconsideration Filed by ABF as to the Bowman Application Should Have Been Granted for Consideration of the Issue Relating to Tacking Bowman Subsequently Acquired Authority With That Here Involved, But Instead of Remanding for a Determination of That Issue the District Court Enjoined Further Proceedings or Consideration.**

During Commission pendency of the subject action, Bowman purchased from Alabama Highway Express, Inc. (AHE) rights authorizing operations between Birmingham and points within a 65 mile radius thereof, on the one hand, and, on the other, Louisville, Kentucky, points in Tennessee, Indiana and described parts of Florida, Ohio and Illinois. Commission approval of the purchase application in Docket MC-F-9921 enabled Bowman to tack the acquired rights to provide through service. Prior to consummation of the purchase, Bowman had interlined traffic with AHE at common points.[16] None of the plaintiffs protested this acquisition.

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[16] "Tacking" is the joining of separate grants of authority belonging to the same carrier by routing shipments through a point common to the separate authorities so as to provide a through carrier service between the territory served under the authority and that served under another and separate authority. **Chemical Leaman Tank Lines, Inc. v. United States,** 208 F.Supp. 1269 (D.Del. 1969); **Braswell Motor Freight, Inc. v. United States,** 336 F.Supp. 709, 711 n. 1 (C.D.Cal. 1971).

"Interlining" is a practice whereby two carriers provide a through service over their respective authorized routes by transferring shipments from one carrier to another at a common service point. **Strickland Transportation Co., Inc.—Purchase—England Transportation Co.,** 104 M.C.C. 297, 316 (1967).



Throughout the subject proceeding, Bowman indicated its intention to render service between Montgomery and points on its proposed routes.[17] This case was tried throughout on that basis.

Following publication of notice in the Federal Register (FR), ABF filed a petition to intervene and for rehearing. It is the only plaintiff that did so. The complaint of ABF involved the acquisition by Bowman of a part of the operating authority of AHE during pendency of the subject application and the acquisition by ABF of a part of the operating authority of Youngblood Truck Lines in Commission Docket MC-F-11179 which was not approved until October 15, 1971. Montgomery was not related to the AHE purchase and ABF cannot serve direct any point in Alabama. ABF argued that the authority which Bowman acquired from AHE should be restricted in this proceeding. The Commission denied the petition of ABF to intervene in the proceeding in which it was formerly a party and withdrew. The order of the Commission was right and the order of the District Court is wrong because:

(1) ABF withdrew its protest to the subject Bowman application.

(2) ABF did not protest the Bowman acquisition of AHE.

(3) To insert a restriction affecting the rights Bowman acquired from AHE would constitute an unlawful revoca-

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[17] Montgomery was not involved in the AHE purchase.

tion of rights which could be considered only under Section 212 of the Act.

(4) ABF is not authorized to serve any cities in Alabama.

(5) ABF failed to exhaust its administrative remedies. If it had any argument with the Division order of September 1, 1972 denying its petition to intervene, it should have filed a petition for rehearing to that aspect of the order under Commission Rule 101. See **Chicago, St. P. M. & O. R. Co. v. United States,** 322 U.S. 1, 88 L.Ed. 1093, 64 S. Ct. 842.

In any event, if there was any question about the right of ABF to intervene in this proceeding, from which it had withdrawn, where it did not exhaust its administrative remedies, and if it had any standing to raise the issue of restricting the rights acquired by Bowman from AHE against tacking with the rights here involved, the proper procedure would be a remand to the Commission by the Court to consider this late raised issued and not an order enjoining the Commission from any further proceedings with respect to the entire grant.

## IV

**When a Substantial Administrative Proceeding Is Concluded Within the Rules and Time Limitations of the Agency, Further Agency Action Cannot Be Judicially Enjoined on the Basis the Record Is So Stale "as a Matter of Law" That It Will Not Support an Agency Order.**

After the surprising order of September 19, 1973 annulling the Commission order and enjoining further proceedings in this cause, the United States and the ICC filed a motion requesting the Court to amend its judgment to remand the case to the Commission. The motion was denied. The District



Court held that "as a matter of law" the record "dealing with 5 and 6 year old facts—could not lawfully support a finding of public need or additional motor carrier service in 1973 or 1974" (App. N, 807). This raises critical issues of original importance affecting **all** administrative proceedings

—Whether a Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and Commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration.

—If so, when does such an administrative action reach that point?

—Can such an issue be raised for the first time on review after the action has been administratively concluded and where multiple time extensions were requested and granted to the plaintiffs? **Gearhart & Otis v. S.E.C.** (D.C. C.A. 1965), 348 F.2d 798, holds you cannot. See also **United States v. L. A. Tucker Truck Lines, Inc.,** 344 U.S. 33, 37, 97 L.Ed. 54, 73 S.Ct. 67.

Hearings in this proceeding commenced on March 21, 1966 and continued, with little respite, through August 24, 1967. The 225 page Commission order was served on January 24, 1972. No steps were taken and no suggestions were made by any party during the administrative proceedings seeking acceleration of agency action. During the interim, a substantial number of plaintiffs were busily engaged prosecuting applications and obtaining operating rights under representations (contrary to those here made) that additional motor carrier service was needed.[18]

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[18] See Appendix C this statement.

In **Associated Press v. F.C.C.** (D.C. C.A. 1971), 448 F.2d 1095, 1106, the Court stated:

> "We cannot see that the Commission abused its discretion by adopting the procedures and the timing which in its sound judgment it considered necessary to assure an adequate record in a case involving many complex and difficult problems. In any event, if the petitioner were aggrieved by delay in the Commission's proceedings their remedy was an application to a court for an order requiring expedition; it was not rejection of the proposed rates. See Deering Milliken, Inc. v. Johnston, 295 F.2d 856 (4th Cir. 1961); N.L.R.B. v. J. H. Rutter-Rex Mfg. Co, 305 F.2d 242 (5th Cir. 1962); M. G. Davis & Co. v. Cohen, 256 F.Supp. 128, 133, n. 7 (S.D. N.Y.), aff'd 369 F.2d 360 (2d Cir. 1966)."

In **Texaco, Inc. v. F.T.C.** (D.C. Cir. 1964), 336 F.2d 754, rev'd 381 U.S. 739, 14 L.Ed.2d 714, 85 S.Ct. 1798, the District Circuit Court of Appeals set aside an F.T.C. cease and desist order on the grounds that the order was not supported by substantial evidence and that one member of the F.T.C. was disqualified from participating in the case. The Court concluded that the normal procedure of remand was inappropriate because of inordinate delays throughout the litigation, including 4 years of investigation and 8 years of litigation, and ordered the complaint dismissed. This order was vacated by the Supreme Court and the case was remanded to the F.T.C. for further action.

In **F.T.C. v. J. Weingarten, Inc.** (5th Cir. 1964), 336 F.2d 687, 691-2, Weingarten contended that an F.T.C. order remand for additional hearings after nearly 3½ years of formal proceedings violated Section 6(a) of the Administrative Procedure Act (APA). The District Court held that the remand was a violation of the APA and ordered the F.T.C. to make a



final disposition of the matter within 30 days. The Fifth Circuit reversed, stating:

> "(W)e think it would be the extremely rare case where a court would be justified in holding that the passage of time and nothing more presents an occasion for peremptory intervention of an outside court in the conduct of an agency's adjudicative proceedings."

The proper remedy for any delay is a court order to expedite the proceedings not one terminating it altogether. This is particularly true where the record is perhaps the largest in the history of motor carrier regulation, involving 933 witnesses and a tremendous administrative and private investment in time and funds to develop a true record of transportation needs, and no party, at any time, sought to accelerate agency action.

## V

**If Legal Error Is Found in the Commission's Order, Judicial Inquiry Is at an End and the Case Should Be Remanded to the Commission.**

The District Court erred in setting aside and enjoining the order of the ICC granting extensions of motor carrier certificates under 49 U.S.C.A. 307(a) on the ground the Court did not agree with the order and considered the evidence would warrant a different conclusion. The District Court exceeded its reviewing authority by rendering the case and enjoining any further Commission consideration or action in the proceeding. It is our position that a district court has authority to set aside an order of the Commission, after proper judicial review, but it cannot substitute its judgment for that of the Commission on the factual issue of public convenience and necessity. **Interstate Commerce Commission v. Union Pac. R. Co.,** 222 U.S. 541, 547, 56 L.Ed. 308, 32 S.Ct. 108; **Mississippi Valley Barge Line**

**Co. v. United States,** 292 U.S. 282, 286, 78 L.Ed. 1260, 54 S.Ct. 692; **Rochester Tel. Co. v. United States,** 307 U.S. 125, 139, 83 L.Ed. 1147, 59 S.Ct. 754; **Universal Camera Corp. v. N.L.R.B.,** 340 U.S. 474, 488, 95 L.Ed. 456, 71 S.Ct. 456; **United States v. Pierce Auto Frt. Lines,** 327 U.S. 515-536, 90 L.Ed. 821, 66 S.Ct. 687, 698.

In **Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co.,** 379 U.S. 642, 13 L.Ed.2d 550, 85 S.Ct. 610, the three-Judge Court (229 F.Supp. 572) set aside and, as here, permanently enjoined the execution and operation of an order of the ICC cancelling certain rate reductions which had been put into effect by the appellee railroad. Contrary to the lower court's statement in this case (App. C, 363), the Court, in **Arrow,** specifically stated the reason for its order was that the new lower rates violated specified sections of the Interstate Commerce Act. The Supreme Court vacated the order of the District Court and directed it to remand the case to the ICC for reconsideration.

In **F.P.C. v. Idaho Power Comm.,** 344 U.S. 17, 97 L.Ed. 15, 73 S.Ct. 85, the District of Columbia Court of Appeals entered an order directing the F.P.C. to modify a license granted by it for a hydroelectric project to allow the government to transmit electricity over the lines of the licensee. The Supreme Court reversed, stating:

> "It is the Commission's judgment on which Congress has placed its reliance for control of licenses. . . . When the court decided that the license should issue without the conditions, it usurped an administrative function. There doubtless may be situations where the provision excised from the administrative order is separable from the remaining parts or so minor as to make remand inappropriate. But, the guiding principle, violated here, is that the function of the reviewing court ends where an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration. (citing cases)."



Accord see: F.T.C. v. Morton Salt Co., 334 U.S. 37, 91 L. Ed. 420, 68 S. Ct. 22.

In **United States v. Saskatchewan Minerals,** 385 U.S. 94, 17 L.Ed.2d 192, 87 S. Ct. 254, the Supreme Court reversed an order of the District Court which remanded the case to the ICC because the District Court order was unduly restrictive and, in fact (as here), precluded the Commission from considering the entire case. The Supreme Court stated that the District Court went too far and that "under the circumstances here, this restriction is an improper limitation on the Commission's duty to reconsider the entire case." There, the Supreme Court held that the remand erroneously attempted to **restrict** the Commission's consideration of the case. Here, the subject order **prohibits** consideration.

The District Court's suggestion that **Interstate Commerce Commission v. Parker,** 326 U.S. 60, 89 L.Ed. 2051, 65 S. Ct. 1490, "has nothing to do with the issue now before this court" is inaccurate. There, as here, the ICC had issued a certificate. There, as here, the District Court enjoined the order. There, the Supreme Court reversed, stating that:

> "The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor carrier service would serve public convenience and needs."[19]

The District Court's excuse for not remanding this case was that (1) "the record in this case is voluminous" and (2) "the record relates to the applications of 10 carriers." Rather than justifying the adamant refusal to remand, these facts should compel such action because it would avoid the necessity of retaking considerable testimony, would permit an updating of the record, if required, and would enable the Commission to consider the proceeding on the basis of an extended background. The Dis-

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[19] It is impossible to reconcile the District Court order with this definitive rule.

trict Court's suggestion that remand would "impede rather than facilitate Commission consideration" reflects a complete incomprehension or indifference to the time and expense of further hearings, involving 933 witnesses, lasting many months, costing many thousands of dollars and repeating the same type testimony already in this record.

In short, the effect of the District Court order will create grave doubt on the consolidation of further applications, thereby resulting in a wasteful expenditure of time and money for all parties. The District Court order will encourage and reward delay. It would enable an organized group of protestants to defeat any application by original briefs to the administrative law judge, exceptions or replies to the recommended order, petitions for reconsideration and petitions under Commission Rule 102.

The District Court order illustrates the hazard of forbidden judicial intrusion into the administrative domain. It should not be allowed to stand. The mandate of the National Transportation Policy (App. A 93) is directed to the Commission and not to the courts. **Schaffer Transportation Co. v. United States,** 355 U.S. 83, 87, 88, 2 L.Ed.2d 117, 78 S. Ct. 173; **Arrow Transportation Co. v. United States,** 176 F.Supp. 411, 416.

## CONCLUSION

Probable jurisdiction should be noted and the judgment below reversed.

Respectfully submitted

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Of Counsel

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## Certificate of Service

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Jurisdictional Statement upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

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Dated at St. Louis, Missouri this 4th day of January, 1974.

...Willis Brown.....

Sworn to and subscribed before me the day and year aforesaid.

...W. Thomas Kelly.....

My Commission Expires Dec. 14, 1976

(SEAL)

# ADDENDUM

# APPENDIX A

**Affidavit of Robert L. Jones, Jr.**

State of Arkansas }
County of Sebastian } ss.

My name is Robert L. Jones, Jr. I am fifty-one (51) years of age. I have actively engaged in the private practice of law in the City of Fort Smith, Arkansas, continuously since September of 1948 (with the exception of 21 months in 1950-52 when I served on active duty in the Judge Advocate General Corps of the United States Army). I am admitted to practice before the Arkansas Supreme Court, the United States District Court for the Western District of Arkansas, the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States. I am local counsel in Fort Smith, Arkansas, for Johnson Motor Lines, Inc., Bowman Transportation, Inc., and Lorch-Westway Corporation, et al, intervening shippers in the case in the United States District Court for the Western District of Arkansas, Fort Smith Division, styled "Arkansas-Best Freight System, Inc., et al, v. United States of America and Interstate Commerce Commission, et al, No. FS-72-C-65".

On November 12, 1973, at the request of co-counsel for the named clients, I went to the office of the Clerk of the United States District Court, Western District of Arkansas, Fort Smith Division, for the purpose of conferring with the Clerk concerning matters related to the preparation and transmittal of the record to the Supreme Court of the United States in connection with the appeal from the judgment of this Court entered September 11, 1973, and the order of this Court entered October 4, 1973. The Clerk, Honorable E. A. Riddle, specifically requested instructions with reference to transmittal of the record of the proceedings before the Interstate Commerce Commission, which he stated was stored in boxes in the base-

ment of the Federal Building (the Clerk's office is on the third and top floor of the building). I accompanied Mr. Riddle to the basemen. to a store room which was locked and we gained entrance by a key in the possession of Mr. Riddle. Mr. Riddle pointed out to me four (4) boxes, size approximately two and a half feet in height by two and a half feet in width and two feet in depth, which had been stamped filed on May 23, 1973 on the outside of the boxes by Mr. Riddle's office. Mr. Riddle informed me that the boxes containing the record of the proceedings before the Interstate Commerce Commission, upon receipt by his office, were stored in this store room and to his knowledge had been in the store room continuously since receipt. A more detailed inspection of the boxes revealed that three out of the four large boxes had been opened and each large box contained two or more smaller boxes. These smaller boxes did not appear to have been opened. I instructed Mr. Riddle to have the four larger boxes with content undisturbed crated into one large container and shipped to the Clerk of the Supreme Court of the United States.

Further affiant sayeth not.

/s/ ROBERT L. JONES, JR.

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Subscribed and sworn to before me, this 16th day of November, 1973.

MARY E. BURROWS
Notary Public

(Seal)

My Commission Expires: April 26, 1977.

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## APPENDIX B

At 114 M.C.C. 596, the Commission stated:

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive. The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1 to 7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown to have received between 3- and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits, taken collectively are representative of the service these shippers are and have been receiving."

At 114 M.C.C. 599, the Commission stated:

> "The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the

period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (From Kansas City, Mo. to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration."

At 114 M.C.C. 600, the Commission stated:

"Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole,



the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings."

## APPENDIX C

The Examiners or the Commission, or both, referred to the following orders of the Commission filed subsequent to those applications here involved. Note: ERO refers to Examiners' order; O refers to the Commission Order (114 M.C.C. 571).

(1) McLean-Control-Herrin, MC-F-10121, Merger, decided 8-5-69 and substitution of McLean for Herrin as applicant. (ERO, p. 2 and appendix A, p. 1) (O, p. 571, 600, 615, and 627).

(2) "Since the close of the hearing Herrin, Braswell and Mercury Freight also obtained authority to operate between Atlanta and Dallas and Atlanta and Houston." (ERO p. 16, footnote 13.)

(3) Roadway Exp-Control-West, MC-F-10178, decided June 26, 1969. (ERO p. 22, and appendix A, p. 6) (O, p. 782)

(4) MC-111383, Sub 16, Braswell Motor Freight (ERO, p. 27, and appendix D, p. 56) (O, p. 792)

(5) MC-75320, Sub 106, Campbell Sixty-Six Exp. (February, 1969) (ERO, p. 27, and appendix D, p. 35) (O, p. 777)

(6) MC-F-10585, Campbell Sixty-Six-Merger-United (November, 1969) (O, p. 611 and 777)

(7) MC-F-10219 and MC-75320, Sub 144, Campbell Sixty-Six (O, p. 777) (April 1969)

(8) MC-75320, Sub 150, Campbell Sixty-Six (April 1970) Ext., Atlanta (O, p. 777).

(9) MC-F-9730, Herrin-Purchase (Portion)-Tamiami, (ERO, appendix A, p. 4)



(10) MC-F-9921, Bowman-Purchase (Portion) Alabama Highway Express (August 1968) (ERO appendix A, p. 25) (O, p. 585)

(11) MC-94201, Sub 86, Bowman Trans., Inc. (July 1971) (O, p. 575 and 772)

(12) 104 M.C.C. 737-Yellow Freight-Merger-Watson-Wilson (December 1968) (ERO appendix D, p. 12) (O, p. 764)

(13) MC-F-9918, Mercury Freight Lines, Inc.-Purchase (Portion)-Sam N. Cole (April 1969) (ERO, appendix D, p. 27) (O, p. 771)

(14) West Brothers-Extension-Natchez and Baton Rouge (ERO appendix D, p. 29) (O, p. 772)

(15) MC-F-9871, Admiral-Merchants-Control-Jack Cole-Dixie Highway Co. (November 1967) (ERO appendix D, p. 36) (O, p. 777)

(16) MC-F-10107, Jack Cole-Merger-Dixie Highway (October 1968) (O, p. 634)

(17) 109 M.C.C. 76, Consolidated Freight-Control (1969) and MC-42487, Sub 744 (January 1971) (O, p. 759)

(18) MC-F-9822 and MC-35320 (Sub 109), T.I.M.E.-DC (May 1970) (O, p. 762)

(19) 110 M.C.C. 892 (1969), Georgia-Florida-Alabama Transp. Co. Extension (O, p. 774)

(20) MC-41432 (Sub 103), East Texas Motor Freight, Inc. Ext.-Mississippi and Louisiana Points (1971) (O, p. 779)

(21) MC-F-10260 and MC-31389 (Sub 120), McLean Trucking Co.-Purchase-S. Z. Harrison (August 1970) (O, p. 784)

(22) MC-31389 (Sub 121), McLean as substituted applicant for Herrin (March 1970) (O, p. 784)

(23) 112 M.C.C. 558 (1970) Braswell Motor Freight Lines, Inc., Ext., MC-111383 (Sub-No. 17) (July 1971) (O, p. 792)

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Supreme Court, U. S.
FILED
JUL 8 1974
MICHAEL RODAK, JR., CLERK

# APPENDIX

**Volume I**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069, 73-1070,
73-1071 and 73-1072

BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC.,
RED BALL MOTOR FREIGHT, INC., LORCH-WESTWAY
CORPORATION, UNITED STATES OF AMERICA,
and INTERSTATE COMMERCE COMMISSION,
Appellants,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION

APPEALS DOCKETED JANUARY 7 AND 8, 1974

PROBABLE JURISDICTION NOTED APRIL 29, 1974

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## APPENDIX A

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(1) 49 United States Code Annotated, preceding §1 note, §301 note, §901 note, and §1001 note.

## NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

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(2) 49 United States Code Annotated, Sections 17(4) and (5)

**Powers of divisions, boards, etc.; effect of orders, etc.**

(4) A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

**Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order**

(5) Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under chapter 8 of this title, persons specified in section 305(e) of this title), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof.



(3) 49 United States Code Annotated, Sections 307(a) and (b).

## § 307. Issuance of certificate—Issuance authorized to qualified applicants for regular routes and between fixed termini

(a) Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

**Certificate not to confer proprietary or property rights in highway**

(b) No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways. Feb. 4, 1887, c. 104, Pt. II, § 207, as added Aug. 9, 1935, c. 498, 49 Stat. 551.

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(4) 5 United States Code Annotated, Sections 556, 557 and 706.

## § 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplication of the issues by consent of the parties;



(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 386.

## § 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554 (d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding

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employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 387.



## § 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.

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(5) 28 United States Code Annotated, Sections 2284 (1) and (5)

**§ 2284. Three-judge district court; composition; procedure**

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 968; June 11, 1960, Pub.L. 86-507, § 1(19), 74 Stat. 201.



## APPENDIX B

**Report and Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served January 24, 1972, 114 M.C.C. 571**

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Served January 24, 1972

M-12267

# INTERSTATE COMMERCE COMMISSION

No. MC-1124 (SUB-NO. 206)

## HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.[2]

*Decided December 30, 1971*

1. In No. MC-2229 (Sub-No. 132), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Texarkana, Ark.; (2) between Jackson, Miss., and Atlanta, Ga.; and (3) between Meridian, Miss., and Tuscaloosa, Ala., subject to a restriction and certain conditions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
2. In No. MC-94201 (Sub-No. 56), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes generally extending (1) between Mobile, Ala., and Houston, Tex.; (2) between Poplarville, Miss., and Baton Rouge, La.; (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59; (4) between Tuscaloosa, Ala., and Fort Worth, Tex.; (5) between Memphis, Tenn., and Topeka, Kans.; (6) between Memphis, Tenn., and Little Rock, Ark.; (7) between West Memphis, Ark., and Little Rock, Ark.; (8) between Little Rock, Ark., and Greenville, Miss.; (9) between Houston, Tex., and Dallas, Tex.; and (10) between Little Rock, Ark., and Texarkana, Tex., subject to a condition and certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.
3. In No. MC-106401 (Sub-No. 18), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of general commodities, with exceptions, over a system of described routes extending (1) between Atlanta, Ga., and Fort Worth, Tex.; (2) between New Orleans, La., and Houston, Tex.; and (3) between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., subject in parts (1) and (2) to certain restrictions. Issuance of a certificate approved upon compliance by applicant with certain conditions, and application in all other respects denied.

This report also embraces the eight applications identified in appendix A to this report. In the absence of exceptions, the recommended order with respect to the application of Roadway Express, Inc., in No. MC-2202 (Sub-No. 273), became effective by operation of law. By order entered December 18, 1969, McLean Trucking Company was substituted as applicant in No. MC-1124 (Sub-No. 26) in lieu of Herrin Transportation Company.

Retitled McLean Trucking Company Extension—Atlanta, Ga.

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4. In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), public convenience and necessity found not shown to require the operations proposed. Applications denied.

*Maurice F. Bishop, James B. Blair, W. T. Brunson, John P. Carleton, William A. Chestnutt, R. W. Collinsworth, David Crockett, Donald E. Cross, Douglas Faris, Leroy Hallman, William P. Jackson, Jr., Claude N. Knox, A. Alvis Layne, William E. Livingstone III, Donald B. Lockridge, Emmet McCaffery, Kim D. Mann, Charles D. Matthews, Carl L. Phinney, Jerry C. Prestridge, Ralph W. Pulley, Jr., Robert S. Richard, Harry G. Silleck, Jr., Thomas G. Sloan, Samuel W. Taylor,* and *William O. Turney* for applicants, and for certain of the applicants as protestants to other applications.

*M. Ward Bailey, Richard A. Bishop, Lennox O. Boyles, Homer S. Carpenter, Drew L. Carraway, James N. Clay III, Morris G. Cobb, John A. Crawford, Paul M. Daniell, Lewis B. Doggett, S. Earl Dove, James H. Epps III, Dan Felts, John S. Fessenden, Charles L. Ford, Jr., Robert W. Gerson, Charles O. Gillogly, Richard M. Gleason, Wentworth E. Griffin, Stephen L. Grossman, W. F. Goodwin, G. F. Gunn, Jr., Harold G. Hernly, Harold G. Hernly, Jr., John C. Henderson, Clifford E. Hillerby, Rollo E. Kidwell, B. W. Latourette, Jr., Leon E. Ledford, W. C. Mauldin, J. E. May, Harold D. Miller, Jr., James W. Nisbet, V. R. Oldenburg, Guy H. Postell, Sol H. Proctor, John M. Records, Lee Reeder, R. J. Reynolds, Jr., R. J. Reynolds III, Lloyd M. Roach, Phillip Robinson, Clifford E. Sanders, John Schwab, Alan E. Serby, Keith Y. Sharpe, S. E. Somers, Jr., Mert Starnes, Phineas Stevens, F. T. Stroud, Robert E. Tate, Frank W. Taylor, Jr., Eugene K. Walburn,* and *Ed White* for protestants.

*Winston M. Hayne, Courts Oulahan,* and *Charles S. Rhyne* for interveners in support of the application in No. MC-106401 (Sub-No. 18).

## REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, DEASON, AND GRESHAM

[1] The examiners recommended that the application of Floyd & Beasley Transfer Company, Inc., be denied. Although this applicant did not take exceptions to this recommendation, it was prevented from becoming effective by operation of law since the exceptions of other parties nominally embraced this proceeding. This application will be disposed of in our findings and order herein, but without further discussion.





DEASON, *Commissioner*:

These proceedings involve eight applications by the same number of motor common carriers to extend their general commodities operations to points generally in that portion of the United States west of Atlanta, Ga., Birmingham, Ala., and Pensacola, Fla., and east of Houston, Dallas, and Fort Worth, Tex. Bowman Transportation, Inc., seeks to extend its operation, in addition to points in the above-described area, to Topeka, Kans., and to Kansas City, Mo.-Kansas City, Kans. The authority sought in each application is fully described in appendix A to this report. With the exception of Deaton, Inc. (which requests irregular-route authority), each applicant has applied for regular-route authority which it proposes to join with the authority it presently holds. Generally speaking, four southwestern carriers (namely, Herrin, Red Ball, Strickland, and Jones) seek to extend their operations to Birmingham and Atlanta, while four southern carriers (viz. Deaton, Baggett, Bowman, and Johnson) would extend their authorized services to the Southwest. The numerous motor carriers described in appendix B oppose the applications.

These applications were heard on a consolidated record, involve what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission, and were the subject of a single report and recommended order by two examiners. The examiners recommended that all of the applications be denied. Exceptions to the order recommended by the examiners were filed by all of the applicants, except Roadway Express, Inc., and Floyd & Beasley Transfer Company, Inc. Exceptions were also filed by a number of shippers' intervening in support of the application of Johnson Motor Lines, Inc. Both the exceptions of Johnson Motor Lines, Inc., and the intervening shippers embrace a request for oral argument. Additionally, "conditional" exceptions were filed jointly by Campbell Sixty-Six Express, Inc., and Gordons Transports, Inc., protestants. Those protestants described in appendix C submitted replies to applicants' and interveners' exceptions.[3] Johnson Motor Lines, Inc., filed a reply to the above-described "conditional" exceptions and to the exceptions of other applicants; while Bowman

[2] By order entered March 30, 1970, 41 named petitioners were permitted to intervene in No. MC-10641 (Sub-No. 18), Johnson Motor Lines, Inc., Extension—Dallas, Tex., with the right to appear and participate in all further proceedings therein, and their jointly filed tendered exceptions were accepted for filing.

[3] As noted in appendix C, the reply by ET & WNC Transportation Company to the exceptions of applicants in Nos. MC-76177 (Sub-No. 304) and MC-94201 (Sub-No. 58) was tendered late.

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Transportation, Inc., has tendered a late reply to the exceptions of Gordons Transports, Inc. Our conclusions differ in three of the embraced proceedings from those recommended by the examiners. The parties will sometimes hereinafter be referred to by appropriate short titles.

PLEADINGS

The contentions of the parties which filed the numerous exceptions and replies are set forth in appendix D. In general, of the eight applicants filing exceptions, two (Deaton and Baggett) filed "conditional" exceptions stating that a grant of their applications would be a necessary corollary to a grant of any of the other applications. They wish to avoid a situation in which their applications would stand finally denied while one or more of the other consolidated applications are pending final decision. Another applicant (Jones) asserts that it should receive at least a partial grant of authority since the record allegedly demonstrates a need for additional service on commodities requiring refrigeration, and it is willing to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature-controlled trailers. Applicant Bowman maintains that it should be granted the authority sought, or in the alternative (inasmuch as its proposal is divisible), that it should be granted authority to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Springfield, Carthage, and Kansas City, Mo. The remaining applicants (Herrin,[4] Johnson, Red Ball, and Strickland) contend generally that they should be authorized to provide the services as proposed.[5] Collectively, applicants except to the basic approach taken by the examiners in assertedly considering those applications on the erroneous concept that either all must be granted or all must be denied. It is averred that the examiners should have evaluated, and made findings and conclusions relating to, each application as a separate and independent matter; and that the supporting testimony should not be treated only in relation to the commodities shipped to the substantial exclusion of the territories and points involved. The intervening shippers, in general, maintain that an affirmance of the examiners' report would result in a monopoly, contrary to the

[4] As noted in footnote 1 in appendix A, Herrin has been merged into McLean Trucking Company. Although the latter has been substituted as applicant herein, the former's name will be used for the sake of continuity of discussion.

[5] It is noted that Red Ball indicates a willingness to have "Performance Report" conditions imposed on any grant of authority to it.





interests of business in the area served or proposed to be served by Johnson. In their jointly filed "conditional" exceptions Campbell and Gordons represent that the applications of Bowman, Baggett, Johnson, Red Ball, and Jones present problems with respect to the joinder of regular- and irregular-route service; and that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments.

Protestants, replying to applicants' and interveners' exceptions, maintain generally that the findings and recommendations of the examiners are fully supported by the evidence and should be affirmed. In separate replies to the jointly filed "conditional" exceptions of Campbell and Gordons, Johnson asserts that these carriers' contentions regarding joinder problems are without merit, and Bowman submits that its proposed restrictions are acceptable and that, inasmuch as it has applied for appropriate authority to convert its existing irregular-route authority, the issue of joinder problems is moot as to it.[6]

The evidence, the recommendations of the hearing examiners, and the pleadings have been considered. Inasmuch as no exception is taken to the examiners' summary of the evidence presented by the protestants as to their authorities, equipment, and operations, this portion of the examiners' report is hereby adopted and is set forth in appendix G to this report.

PRELIMINARY MATTERS

Johnson and the shippers intervening in support of its application request oral argument, citing the complexity of the case and its importance in terms of public interest as reasons. In reply to these requests, certain protestants[7] submit that the issues are not complicated and relate principally to a question of fact, and that the request for oral argument should therefore be denied. Inasmuch as the parties seeking oral argument have not shown either that it is required or that it would be beneficial in reaching our determination in these proceedings, this request is hereby denied.

[6] In a report and recommended order in No. MC-9420 (Sub-No. 86) served March 29, 1971, which became effective by operation of law on April 29, 1971, Bowman's application seeking the conversion of its irregular-route authority in its certificates Nos. MC-94201 and MC-94201 (Sub-Nos. 35 and 53) was granted. A certificate authorizing the corresponding regular-route operations was issued July 12, 1971, in Bowman's lead docket number.

[7] Mercury and East Texas in their joint reply to the exceptions of applicants and intervening shippers, and Akers, Braswell, Campbell, Gordons, Roadway, TIME, Transcon, and Watson in their joint reply to the exceptions of Johnson.

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The joint reply filed by certain protestants to Bowman's exceptions contains a renewed motion to strike appendixes A and B to exhibit 1985 on the grounds that such evidence represents improper rebuttal evidence and that the method of its preparation makes the data unreliable. We agree with the examiners' finding that the challenged appendixes constitute proper rebuttal to information and transit time studies presented by protestant with respect to certain of Bowman's interline services. We also concur in the examiner's conclusion that the objection as to the method of preparation of the questioned appendixes goes to their weight and not their admissibility. The examiners' ruling is hereby sustained.

The replies of applicant Bowman and protestant ET & WNC were both filed 1 day after the due date. Inasmuch as no party has been prejudiced by that delay and because their positions are entitled to full consideration in this decision, those late-tendered replies are hereby accepted for filing.

As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969); and *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties[1] to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations.

The interveners in support of Johnson's application in No. MC-106401 (Sub-No. 18) and applicant Bowman in No. MC-94201 (Sub-No. 56) have separately filed petitions requesting leave to supplement their exceptions, embracing tendered supplemental exceptions. A number of protestants have replied to these petitions, and request an opportunity to reply to the supplemental exceptions should they be accepted for filing.[2] Petitioners seek the acceptance

[1] Roadway, West Transcon, Holloway, T.I.M.E., Consolidated, Akers, Yellow Freight, and Braswell.

Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Sasa Motor Freight Line, Inc., and Terminal Transport Co., Inc.

[2] Replies to the petition in No. MC-106401 (Sub-No. 18) were filed jointly by Mercury and East Texas; separately by Ryder; jointly by Akers, Braswell, Campbell, Gordons, Roadway Express, Inc., Roadway Express of Mississippi, Inc., T.I.M.E., and Transcon. A reply to both petitions was filed by Jack Cole-Dixie Highway Company; while Mercury Freight Lines, Inc., and East Texas filed a joint reply to Bowman's petition in No. MC-94201 (Sub-No. 56).





for filing of their supplemental exceptions on the grounds that certain economic pronouncements have urged that regulatory agencies should consider competition as a "critical factor" when performing their adjudicative functions, and that certain recent court and Commission decisions should be considered in determining the issues here involved. Generally, protestants reply that this Commission's General Rules of Practice do not permit the filing of supplemental exceptions; that the economic pronouncements are immaterial and irrelevant; and that, for the most part, the decisions cited were available when the original exceptions were filed. As pointed out by certain protestants, an earlier petition of several of the opposing parties to reopen this proceeding to submit evidence of authorities granted since the hearing was denied on the grounds that the examiners would take official notice of any Commission action and that no useful purpose would be served by adding these pleadings to this already voluminous record. Whereas we will take official notice of all pertinent evidence and Commission decisions, we see no reason to prolong the disposition of this proceeding and, therefore, the petitions will be denied and the tendered supplemental exceptions will be rejected.

APPLICANTS' EVIDENCE

*Herrin* holds regular- and irregular-route motor common carrier authority to transport general commodities in an area bounded generally on the north by Little Rock, Ark., Memphis, Tenn., and Atlanta, Ga.; on the south by Houston, New Orleans, La., and Pensacola and Jacksonville, Fla.; on the west by Fort Worth, Dallas, and Waco, Tex.; and on the east by Savannah, Ga. Its authorized routes, which include service to numerous intermediate points, extend between (1) Houston and New Orleans through Orange, Tex.; (2) Houston and Dallas-Fort Worth; (3) Houston and Waco; (4) Dallas and New Orleans through Lufkin, Tex., and De Ridder, La.; (5) Dallas and Monroe, La., through Shreveport, La.; (6) Shreveport and New Orleans through Alexandria, La.; (7) New Orleans and Baton Rouge, La.; (8) Shreveport and Memphis through El Dorado, Ark.; (9) El Dorado and Little Rock; and (10) New Orleans and Jacksonville, through Crestview, Marianna, Tallahassee, Pensacola, and Lake City, Fla., and numerous points in south Georgia, including Macon, Savannah, Valdosta, Thomasville, and Waycross.

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Herrin's routes into Macon and Savannah extend along U.S. Highway 80 through Jackson, Miss., Montgomery, Ala., and Columbus, Ga., which points are traversed for operating convenience only. It operates between Memphis and Jacksonville, traversing (for operating convenience only) Tupelo, Miss., Birmingham, and Columbus. Herrin also holds authority to operate between Macon and Atlanta, limited to traffic moving to, from, or through Monroe, New Orleans, Baton Rouge, and Memphis, and further restricted against the transportation of traffic moving between Little Rock and Memphis, and their respective commercial zones, on the one hand, and, on the other, Atlanta and its commercial zone. Applicant has been granted alternate-route authority generally over Interstate Highways 85 and 20 and U.S. Highway 78 to and from Atlanta which eliminates the necessity of observing the Macon gateway on Atlanta Traffic.[1] This alternate-route authority is restricted to the transportation of shipments moving to, from, or through Monroe, Baton Rouge, or New Orleans. It now operates to or through Birmingham, Mobile, and Montgomery, Ala., Jackson, Columbus, Atlanta, and Pensacola. The last two points are service points.

Herrin maintains terminals at Houston, Beaumont, Dallas, and Waco, Tex.; Shreveport, Lake Charles, Lafayette, New Orleans, Baton Rouge, and Alexandria, La.; El Dorado; Memphis; and Jacksonville. Commission agency stations are maintained at Houma, Abbeyville, and Monroe, La.; Macon, Savannah, and Waycross, Ga.; and Pensacola. If its application is granted, it will establish terminals at Atlanta, Columbus, Birmingham, Mobile, Montgomery, and Jackson. Additionally, it will reestablish a terminal at Little Rock. Herrin operates 252 tractors (including 5 sleeper cabs), 441 trailers, and 225 trucks. It would add 41 tractors, 80 trailers, and 67 trucks to its fleet upon approval of this application.

By this application, Herrin seeks (1) to serve Birmingham, Mobile, Montgomery, Columbus, and Jackson as intermediate points on its presently authorized routes; (2) to remove the restriction on service at Pensacola to traffic moving through New Orleans; (3) to operate over all feasible routes between the territory it now serves, on the one hand, and, on the other, Atlanta; and (4) to remove the restriction against the transportation of traffic between Memphis and Little Rock, on the one hand, and, on the other, Atlanta.

[1] See certificate No. MC-31389 (Sub-No. 119) issued March 19, 1970.





Herrin introduced proposed operating schedules between Dallas, Houston, New Orleans, Memphis, Baton Rouge, and Shreveport, on the one hand, and, on the other, Atlanta, Birmingham, Columbus, Mobile, Montgomery, Jackson, and Pensacola. The schedules are based on a 41-mile per hour average running time. To illustrate, between Dallas and Atlanta (815 Herrin operating miles) and between Houston and Atlanta (813 operating miles), Herrin proposes first-afternoon service on volume traffic and second-morning delivery on less-than-truckload (LTL) traffic, with vehicle running times of 19 hours and 55 minutes, and 19 hours and 49 minutes, respectively. On volume shipments, it proposes first-morning service between Birmingham, Dallas, and Houston; first-afternoon between Columbus, Dallas, and Houston; first-afternoon between Dallas and Mobile; first-morning between Houston and Mobile; first-afternoon between Montgomery, Dallas, and Houston; and first-morning service between Jackson, Dallas, and Houston. On LTL traffic, Herrin proposes first-afternoon service between Birmingham, on the one hand, and, on the other, Dallas and Houston; second-morning between Columbus, on the one hand, and, on the other, Dallas and Houston; first-afternoon between Mobile and Dallas; first-morning between Mobile and Houston; second-morning between Montgomery and Dallas, and first-afternoon between Montgomery and Houston; and first-morning between Jackson, on the one hand, and, on the other, Dallas and Houston. Between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, New Orleans and Memphis, Herrin would offer first-morning service on truckload shipments. Applicant proposes the same service on LTL shipments between those points, except between Atlanta and New Orleans which will be first-afternoon. First-morning service is proposed on both truckload and LTL traffic between Pensacola and New Orleans and first-morning service would be provided between Atlanta, Birmingham, Columbus, Mobile, and Montgomery, on the one hand, and, on the other, Baton Rouge and Shreveport, on both LTL and truckload shipments, with the exception that service between Atlanta and Shreveport on LTL traffic will be second-morning. Points in Texas and Louisiana served by Herrin and not specifically named would receive 1-day later service than movements to or from New Orleans on LTL. The proposed schedules on volume shipments would be the same to other Louisiana and Texas points as that to and from Houston. The Arkansas points served by Herrin and not named specifically would be served 1 day later than Memphis on LTL and the same as

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Memphis on volume shipments. Applicant would, at least initially, operate sleeper cabs between Atlanta and Dallas-Fort Worth. Between Atlanta and New Orleans, service would be provided either with sleeper cabs or by driver relay.

*Red Ball* holds motor common carrier authority to transport general commodities, with the usual exceptions,[1] over regular routes within a territory generally bounded by Denver, Colo., and Santa Fe, N. Mex., on the west; Mobile, Jackson, and Memphis, on the east; Kansas City and Denver, on the north; and Houston, New Orleans, and Mobile, on the south. Applicant's operations extend over regular routes generally (1) between Denver and Dallas, through Pueblo, Colo.; Clayton, N. Mex.; Amarillo and Wichita Falls, Tex.; Lamar, Colo., and Boise City, Okla.; (2) between Denver and Memphis through Oklahoma City, Okla., and Little Rock; (3) between Dallas-Fort-Worth and Houston; (4) between Houston, Dallas, Fort Worth, and Jackson, through Shreveport and Monroe; (5) between Dallas-Fort Worth and Memphis, Tenn., through Shreveport and Little Rock; (6) between Dallas-Fort Worth, on the one hand, and, on the other, Baton Rouge and New Orleans, through Shreveport; (7) between New Orleans, Baton Rouge, Jackson, and Memphis; (8) between Memphis and Kansas City, Mo.-Kansas City, Kans., through Little Rock and Fort Smith; (9) between New Orleans and Baton Rouge, on the one hand, and, on the other, Natchez, Vicksburg, and Jackson, Miss.; (10) between Memphis and Jackson, Vicksburg, Natchez, and Gulfport, Miss.; (11) between Dallas, Houston, Fort Worth, and Mobile, through Shreveport, Monroe, and Jackson, and also through Baton Rouge and New Orleans; (12) between New Orleans and Baton Rouge, on the one hand, and, on the other, Kansas City, Mo.-Kansas City, Kans.; and (13) between Houston and New Orleans through Baton Rouge, Lake Charles, and Beaumont. Approximately 1,450 points in 10 States (not including Kansas City, Kans., and applicant's explosive authority to Pensacola, Fla.) are served direct by Red Ball. The points include approximately 550 in Texas, 475 in Louisiana, and 125 in Arkansas.

Ninety-two terminals are maintained by applicant throughout its system, with 44 located in Texas, 17 in Louisiana, 8 in each of Arkansas and Colorado, 6 in New Mexico, 4 in Mississippi, 2 in Oklahoma, and 1 each in Missouri, Tennessee, and Alabama. If the application is granted, Red Ball proposes to establish terminals at Atlanta, Birmingham, and Greenville, Miss. It operates 654 tractors

[1]Red Ball is, however, authorized to transport explosives.





and 1,520 trailers, including 23 convertavans and 47 refrigerated, 20 insulated, and 40 open-top trailers; and it will add to its fleet if necessary.

Red Ball proposes to extend its authority (1) between Texarkana and Greenville, Birmingham, and Atlanta; (2) between Jackson and Atlanta; and (3) between Meridian, Miss., and Tuscaloosa, Ala., for the purposes of joinder only, restricted against transportation between Memphis and its commercial zone, on the one hand, and, on the other, Greenville, Birmingham, or Atlanta, and the respective commercial zones of each. The authority sought, if granted, will be tacked so that applicant would be able to provide service between Atlanta, Birmingham, and Greenville, on the one hand, and, on the other, its authorized points (except between Greenville and Memphis).

On LTL traffic, Red Ball proposes next-morning service between Dallas-Fort Worth and Greenville; between Texarkana and Shreveport, on the one hand, and, on the other, Birmingham and Greenville; between New Orleans and Baton Rouge, on the one hand, and, on the other, Greenville; between Baton Rouge and Birmingham; between Monroe and Little Rock, on the one hand, and, on the other, Birmingham and Greenville; between Jackson, on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; and between Atlanta and Birmingham. Second-morning service is proposed from Denver to Greenville; between Texarkana and Amarillo, Tex., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville; between Dallas-Fort Worth, on the one hand, and, on the other, Atlanta and Birmingham; between Shreveport and Atlanta; between New Orleans, on the one hand, and, on the other, Atlanta and Birmingham; between Baton Rouge and Atlanta; between Monroe and Atlanta; and between Little Rock and Atlanta. And, third-morning service is proposed between Denver, on the one hand, and, on the other, Atlanta and Birmingham; and from Greenville to Denver. The schedules would involve an additional day for service at points beyond the above-described terminals. Truckload traffic will be handled on a call-on-demand basis. Applicant's proposed schedules are based on an average over-the-road speed of 40 miles per hour. Single-driver operations and two-man teams will be used between Denver, Amarillo, Dallas, Fort Worth, Texarkana, and Shreveport, on the one hand, and, on the other, Birmingham and Atlanta. Red Ball purposes 17 westbound schedules, 18 eastbound, 1 northbound (from New Orleans and Baton Rouge to Greenville), 1 southbound (from Greenville to Baton Rouge

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and New Orleans), and 1 schedule between Jackson and Greenville.

*Deaton* holds irregular-route motor common carrier authority to transport specified commodities. It is authorized, under its general-commodity authority, to transport traffic (1) between Birmingham and points in Alabama within 65 miles thereof, on the one hand, and, on the other, New Orleans and points in Mississippi; and (2) between Atlanta, on the one hand, and, on the other, eight specified Alabama points which are located within 65 miles of Birmingham, restricted against the transportation of traffic between Atlanta and Birmingham. Its general-commodity authority has been converted from irregular-route to regular-route authority. Under its remaining authority it transports specified commodities generally between points in Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Applicant maintains terminals at Atlanta; Birmingham, Mobile, and Anniston, Ala.; Columbus, Greenville, Tupelo, Jackson, and Natchez, Miss.; New Orleans; Memphis; and Tampa, Fla. It proposes to establish terminals at Dallas, Houston, Beaumont, Monroe, Baton Rouge, and Shreveport. A substantial fleet of equipment is operated by applicant, and if its application is granted Deaton would add 20 tractors and 40 trailers.

Deaton proposes to tack the authority sought with some of its existing authority and render a call-on-demand service with an anticipated transit time of 2 days from Houston and Beaumont to points in Georgia and Alabama. Volume traffic tendered at a certain time of day, handled by a two-man operation, might be delivered by the first afternoon. Some of the LTL traffic, also handled by a two-man operation, would be delivered on either the second day or third morning. Between Atlanta, Anniston, and Birmingham, on the one hand, and, on the other, Monroe, Shreveport, and Baton Rouge, La., and Orange, Beaumont, Texas City, and Houston, Tex., truckload traffic would be delivered in 1 day and LTL traffic would receive 2-day service. From Atlanta to Dallas and Fort Worth, volume traffic would be delivered on the next afternoon and LTL traffic would be delivered on either the second day or third morning. Deaton believes that the traffic it presently interlines would support one schedule of LTL traffic a day from Atlanta to Monroe, Dallas, and Fort Worth and one a day from Birmingham and Anniston to the Baton Rouge and Houston areas.

*Strickland* holds regular-route motor common carrier authority to transport general commodities over a network of routes extending





between the Northeast, the Midwest, and the Southwest. Its regular routes in portions of Texas, Arizona, and Louisiana extend to the major points of Memphis, St. Louis, Mo.; Milwaukee, Racine, and Kenosha, Wis.; Aurora, Joliet, and Chicago, Ill.; Detroit, Mich.; Cleveland, Ohio; Philadelphia, Pa.; Camden, Atlantic City, and South Kearney, N.J.; New York, N.Y.; Bridgeport, Orange, New Haven, and Hartford, Conn.; and Springfield and Boston, Mass. Applicant maintains 35 terminals including those located at Shreveport and Texarkana. If its application is granted, terminals would be established at Atlanta, Birmingham, Jackson, Monroe, and Greenville. It operates 458 tractors, about 1,055 trailers, and 190 trucks.

Strickland seeks authority (1) between Atlanta and Texarkana, over a specified route, serving Birmingham, Greenville, and those points on U.S. Highway 82 in Arkansas, as intermediate points, and (2) between Atlanta and Shreveport, over a specified route, serving Jackson as an intermediate point and Monroe as a point of joinder. The proposed routes would permit service between Atlanta, Birmingham, and Jackson, on the one hand, and, on the other, Strickland's presently authorized points in Arkansas, Mississippi, Louisiana, and Texas through Monroe, Shreveport, and Texarkana.

Numerous schedules to and from the involved major points are proposed by Strickland. All of the schedules propose either 1- or 2-day service. To illustrate, a schedule proposed under route 1 (viz. between Atlanta and Texarkana) would leave Atlanta at 8 p.m., traverse 639 miles at 38 miles per hour, and arrive in Texarkana at 12:50 p.m. of the next day. Another example would be schedule 1017, under route (2) between Atlanta and Shreveport, which would leave Atlanta at 8 p.m., traverse 808 miles in 21 hours and 15 minutes, and arrive in Dallas-Fort Worth at 5:15 p.m. the following day, with second-day delivery expected. The proposed schedules will be performed by two-man teams with sleeper cabs and are direct terminal-to-terminal operations without intermediate stops, with the exception of the pedal run between Greenville and Texarkana.

Strickland introduced two abstracts of shipments transported by it in interline service during March 1965. The first, appendix H to exhibit 38, covers 887 shipments weighing a total of 731,892 pounds, which originated at points in Texas, were transported by Strickland from specified Texas points (mostly Dallas), to Memphis, Shreveport, St. Louis, Little Rock, and New Orleans, where they were interlined for delivery to points in Alabama, Florida, Georgia, Mississippi, North and South Carolina, and Virginia. Approximately 250 of these shipments were originated by a carrier other than Strickland and

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interlined to the latter at Dallas or another specified Texas point. Applicant here proposes to transport these shipments from the Texas points directly to Atlanta. The second, appendix I to the same exhibit, covers 1,942 shipments weighing a total of 1.4 million pounds which originated at points in Alabama, Florida, Georgia, Mississippi, and North and South Carolina. They were interlined to Strickland at Memphis (approximately 1,850 of the shipments), Little Rock (34), or New Orleans (58), and were transported by applicant to points in Arkansas, Texas, and Louisiana. Approximately 650 such shipments were again interlined for delivery to their ultimate destination points. The average elapsed time from the origin carriers' billing date to the time of Strickland's billing date on 1,855 of these shipments was 3.6 days.

*Baggett* holds motor common carrier authority to transport general commodities, with certain exceptions, (1) over regular routes which extend generally between Chattanooga, Tenn., Rome, Atlanta, and Columbus, Ga., Florence, Decatur, Birmingham, Montgomery, and Mobile, Ala., and New Orleans, La.; and (2) over irregular routes from Montgomery, Ala., to points in Alabama within 125 miles of Montgomery. It also holds authority to transport explosives between, from, and to specified points and areas in 44 States and the District of Columbia, and specified commodities generally between, from, and to points in Alabama, Florida, Georgia, New Jersey, New York, Pennsylvania, and Tennessee. Additionally, a wholly owned subsidiary and a carrier under common control with applicant hold certain interstate authority.

Baggett maintains 20 terminals, 14 of which are located in Alabama. It proposes to establish terminals at Dallas-Fort Worth, Houston, and Beaumont. With its subsidiary, applicant operates 353 tractors, 856 trailers, and 220 trucks, including tractors used in local service.

Applicant proposes second-morning delivery from Chattanooga, Tenn., Atlanta, Birmingham, and Mobile to Fort Worth, Dallas, and Houston, with dropoffs at Beaumont. An additional day will be required on movements from Baggett's other terminal points.

*Bowman* holds both regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions) generally from, to, and between points in a territory bounded by Chicago, Ill., and points within 35 miles of Columbus Circle, N.Y., on the north; Miami and Pensacola, Fla., and Mobile, on the south; Memphis and Tuscaloosa, Ala., on the west; and points along the eastern seaboard. Its irregular-route authority to





serve generally points in Florida, Alabama, Georgia, South and North Carolina, Tennessee, Maryland, Illinois, Indiana, and Ohio has been converted to corresponding regular-route authority.[1] As here pertinent, applicant was granted authority to operate over 71 specified routes, the western termini of which are Memphis, Tuscaloosa, Montgomery, and Mobile.

Bowman maintains 25 terminals, most of which are located in the Southeast, including those located at Atlanta, Birmingham, Memphis, Mobile, Montgomery, and Pensacola. It proposes to establish terminals at New Orleans, Baton Rouge, Lake Charles, Shreveport, and Monroe, La.; Beaumont, Houston, Dallas-Fort Worth, Marshall, and Texarkana, Tex.; Vicksburg, Jackson, Meridian, and Greenville, Miss.; El Dorado, Little Rock, Fort Smith, and Jonesboro, Ark.; and Springfield, Carthage, and Kansas City, Mo. Agency stations will be established at Topeka, Kans., Laurel, Miss., and Tuscaloosa, Ala. Its fleet consists of 478 tractors, including 359 sleeper cabs; and 978 trailers. If the application is granted, applicant will add 100 tractors, 100 trucks, and 200 trailers.

By this application, Bowman seeks to extend its operations over a series of regular routes between its present terminal points at Memphis, Atlanta, Birmingham, Montgomery, Mobile, and Pensacola to serve 8 points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas. It does not seek authority to serve between any points west of its presently authorized points. Also, Bowman does not propose to handle traffic originating or interlined at Memphis and moving to Dallas, Fort Worth, or other points in the territory it seeks to serve. However, it indicates that it will handle shipments through Memphis which originate and are received by applicant at points east of Memphis.

Bowman's proposed LTL schedules are based on a 35-mile per hour average over-the-road running time and take into consideration the time required for handling traffic at its terminals. Applicant operates over the highways on weekends, and proposes to use two-man teams with sleeper cabs on all movements between points requiring more than 10 hours driving time. It proposes to render 1- or 2-day service generally between Chattanooga and

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[1] See footnote 8, supra. Also, on August 1968, Bowman acquired a portion of the operating rights of Alabama Highway Express which included, among other authority, the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, *Bowman Transportation, Inc.—Purchase (Portion)—Alabama Highway Express, Inc.* (not printed), decided July 8, 1968.

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Memphis, Tenn., and Birmingham, Gadsden (located 50 miles east of Birmingham), Montgomery, and Mobile, Ala., on the one hand, and, on the other, point in the territory it seeks to serve. Applicant introduced exhibits showing that on the 546 shipments moving from its Miami to its Atlanta terminals (744 operating miles) during a specified 1-week period in 1966, the average transit time was 1.9 days; that on the 321 shipments moving from its Birmingham terminal during the same period and delivered or interlined at Charlotte (408 operating miles), the average transit time was 1.5 days; that on 206 shipments moving from its Richmond, Va., terminal to its Memphis terminal (855 operating miles) during the same period, the average transit time was 2.5 days; and that on 26 shipments handled from Birmingham to New York, N.Y. (1030 operating miles) during the 1-week period, the average transit time was 2.8 days.

*Johnson* holds regular- and irregular-route motor common carrier authority to transport principally general commodities, with the usual exceptions. Its regular routes extend between points in a territory bounded by Boston and Worcester, Mass., and Niagra Falls, Oswego, and Glen Falls, N.Y.,[*] on the north, and Pensacola, Mobile, Pascagoula and Gulfport, Miss., and New Orleans, on the south, generally by way of Providence, R.I., Hartford, Conn., New York, N.Y., Camden, N.J., Philadelphia, Baltimore, Md., Washington, D.C., Richmond, Charlotte, N.C., Atlanta, and Montgomery. Applicant's irregular-route general-commodity authority extends generally to points in New York, New Jersey, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and Florida. As here pertinent, applicant holds irregular-route authority to transport general commodities (with the usual exceptions) between Graniteville and Charleston, S.C., on the one hand, and, on the other, points in South Carolina and Georgia (except between Graniteville and Atlanta). Irregular-route authority to transport specified commodities from, to, and between points in Massachusetts, Rhode Island, Connecticut, and New York is also held by applicant.

Applicant maintains about 35 terminals at principal points on its routes and in its irregular-route territory, including those located at New Orleans, Gulfport, Mobile, Pensacola, Montgomery, Atlanta, Savannah, and Charlotte, its home office and main break-bulk

[*]Review Board Number 5, by order entered December 18, 1970, in No. MC-F-11006, *Johnson Motor Lines, Inc.—Merger—Johnson Motor Lines Corp.*, authorized the merger of the operating rights and the property of Johnson Motor Lines Corp. into Johnson Motor Lines, Inc. The merged operating rights are set forth in certificate No. MC-106401 (Sub-No. 31), issued July 19, 1971.





terminal. Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport. Applicant operates approximately 500 tractors and 1,000 trailers, including 44 temperature-controlled vehicles, and it will add 50 tractors and 100 trailers to its fleet if its application is granted.

Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route. The stated purpose of the proposal is to permit service of an "over-head" nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes. No service is proposed between points on the southern route and points on the northern route. Applicant indicates that it will offer daily, scheduled, LTL service between Dallas and Savannah, by tacking its above-described irregular-route authority with its regular-route authority at Graniteville. Johnson also seeks authority to operate over two alternate routes. It is submitted that one (which is between Shreveport, a point on the northern route, and Baton Rouge, a point on the southern route) would enable applicant to move its empty equipment from the northern route to the southern route to pick up traffic from the Pascagola, Mobile, and Pensacola area. The other (which is between Montgomery and the junction of U.S. Highways 11 and 80 near Cuba, Ala.) would enable applicant, on its northern route, to move eastbound traffic from Dallas through Montomery and Opelika, Ala., making pickups at these two points, and then proceeding to Atlanta.

Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by applicant mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area, from and to points in North Carolina, Wallace, S.C., and points north and east thereof, will break bulk at Charlotte, and move by

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two-man teams'' on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points. Traffic moving to and from points on the southern route and applicant's present terminals of Gulfport, Pascagoula, Mobile, and Pensacola will be handled by schedules originating and terminating in Mobile and Pensacola. Two-man teams will handle the schedules originating and terminating at Mobile, which traffic will move between Pascagoula and Gulfport and the proposed terminals at Beaumont and Houston. A single driver will handle the schedule originating and terminating at Pensacola on the traffic moving to and from Mobile, Pascagoula, and Gulfport, and to and from Baton Rouge. The Mobile schedule will be dispatched through Pascagoula and Gulfport to pick up en route and deliver at Beaumont en route to Houston. Eastbound, the Houston schedule will be dispatched through Beaumont to pick up en route and will stop en route to Mobile at Gulfport and Pascagoula to deliver. The Pensacola schedule will be dispatched through Mobile, Pascagoula, and Gulfport to pick up en route and then proceed to Baton Rouge where it will terminate. Applicant proposes 17 westbound schedules (each schedule representing 1 vehicle) from Charlotte and 7 westbound from Atlanta daily, 5 days a week (excluding holidays). Eastbound, nine schedules would move daily to Charlotte and four would move to Atlanta. One westbound vehicle would be dispatched from Mobile and one from Pensacola. Eastbound, one vehicle would be dispatched from Houston to Mobile and one from Baton Rouge to Pensacola. Additionally, applicant proposes dispatched movements, which are not set up as daily schedules, to handle overflow freight from Charlotte and Atlanta to points on the proposed northern and southern routes. Thus, not including the two above-described dispatched movements from Charlotte and the two from Atlanta, applicant proposes 41 schedules daily, namely: 17 from Charlotte, 7 from Atlanta, 1 from

'On March 13, 1966, the change in Johnson's operations to include two-man operations became effective. Applicant introduced a summary of a survey of two-man operations between Charlotte, on the one hand, and, on the other, Pensacola, Mobile, Pascagoula, Gulfport, and New Orleans. Between January 2 and January 26, 1966, applicant's two-man teams made 253 trips between the above-described points in a total of 4,491 hours over 176,115 miles for an overall average of 39.21 miles per hour.





Pensacola, 1 from Mobile, 9 eastbound to Charlotte, 4 eastbound to Atlanta, 1 eastbound out of Houston to Mobile, and 1 eastbound out of Baton Rouge to Pensacola.

Originating and delivering traffic only between Monday and Friday (excluding holidays), applicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve. The 1-day service would generally be rendered only on either the "Express' schedules over the southern route or between Baton Rouge and applicant's southernmost terminals (except New Orleans). To illustrate Johnson's proposal, a shipment moving from Medford (Boston), Mass., over Charlotte to Houston would depart from Medford at 9 p.m. on a Monday and arrive at Charlotte at 9:30 p.m. of the following day. At 33.3 miles per hour, the 816 miles between these terminals would be traversed in 24.5 hours. Four hours would be allowed for break-bulk operations at Charlotte and departure from Charlotte would occur at 1:30 a.m. Wednesday. The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour. Thus, the movement would arrive in Houston at 4:30 a.m. on Thursday.

*Jones* holds regular- and irregular-route motor common carrier authority to transport general commodities (with the usual exceptions) and specified commodities, including frozen and prepared foodstuffs. Its regular routes extend generally between points within a territory bounded, on the north, by Kansas City and Chicago; on the south by Dallas-Fort Worth and Greenville and Winona, Miss.; on the west by Oklahoma City, Okla., and Wichita, Kans.; and on the east by Memphis. Applicant presently traverses a portion of the proposed routes, viz, generally between Winona and Texarkana, from Winona over U.S. Highway 82 to Texarkana; between Texarkana and Dallas, from Texarkana over U.S. Highway 67 to Dallas; and between Texarkana and Sherman, over U.S. Highway 82. Jones' irregular-route authority generally authorizes the transportation of general commodities within portions of this same area. Applicant maintains 24 terminals including 6 in each of Arkansas and Oklahoma, 3 in each of Mississippi and Missouri, 2 each in Texas and Kansas, and 1 each at Chicago and Memphis. Additional terminals will be established at Atlanta, Birmingham, El Dorado, and Texarkana, Ark. Its equipment consists of 310 tractors, 120 trucks, and 636 trailers, including 111 equipped with mechanical refrigeration. If the application is granted, 10 tractors and 20 trucks will be added to Jones' fleet.

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Jones proposes to serve (1) between Atlanta and Texarkana over a specified route, serving the intermediate points of Birmingham, Greenville, and those on U.S. Highway 82 in Arkansas; between Texarkana and Sherman over a specified route, serving all intermediate points; between Texarkana and Dallas over a specified route, serving all intermediate points; and between Birmingham and Memphis serving no intermediate points. The proposals are restricted against the handling of traffic to or from Memphis and its commercial zone, on the one hand, and, on the other, points east of the Mississippi River.

Applicant would render overnight service to and from Birmingham and Atlanta, on the one hand, and on the other, those points served in northeast Arkansas and southeast Missouri, points on U.S. Highway 70 between Memphis and Little Rock (including Little Rock), the Mississippi River Delta area, and points on U.S. Highway 82 as far west as El Dorado. The remaining territory Jones serves would receive second-morning service on LTL traffic moving to and from Atlanta and Birmingham. Volume shipments will receive next-day service up to 800 miles. LTL shipments between Birmingham and Atlanta, on the one hand, and, on the other, St. Louis, Mo., would receive second-morning service and truckload shipments would receive overnight service.

Jones proposes one schedule initially from Atlanta which would stop at Memphis for a relay of drivers and thence move to Springdale, Ark., for break bulk and delivery to local areas and transfer to units moving to the terminals of Springsfield and Joplin, Mo., Muskogee, Okla., and Wichita, Kans. In the reverse direction, shipments will move from those points at 10 a.m. and will be relayed through Memphis for delivery to Atlanta on an overnight basis. Another schedule will move between Atlanta and Memphis which will be coordinated with schedules between Memphis and Jonesboro and Little Rock, Ark., allowing for overnight service between these Arkansas points and Atlanta. A schedule is proposed between Memphis and Birmingham with a transfer providing for overnight and second-morning service from Atlanta. Another schedule would move between Atlanta and Greenville with pickups and dropoffs at Birmingham. At Greenville and Memphis, shipments would be combined with the other schedules and would be dispatched along with the present dispatching system of Jones on an overnight basis between Greenville and Dallas and Sherman and between Memphis and other major terminals. Although Jones proposes to use driver relays, it indicates that if two-man, sleeper-





cab operations prove beneficial, they will be used. Jones' schedules are based on a 40-mile per hour average running time which includes intermediate stops for rest and meals. The schedule between Atlanta and Fort Worth-Dallas would stop for combining at Greenville and proceed from Greenville to Dallas-Fort Worth the next evening, with about a 10-hour layover at Greenville on LTL traffic. It would leave Atlanta at 7 p.m., make a pickup at Birmingham, and arrive in Greenville at 6 a.m. the following morning. The schedule would leave Greenville about 10 hours later for Dallas-Fort Worth and make a dropoff at Texarkana. Traffic between Greenville and El Dorado would be handled separately from the through sechedules. Jones hopes to interline perishable products from Florida with Ryder at Atlanta, which traffic Jones cannot now interchange at Memphis because of the length of time involved in the Jones' refrigerator unit being off its line.

Each of the applicants is financially and otherwise fit and able properly to conduct the proposed services.

SUPPORTING EVIDENCE

Nine hundred and thirty-three witnesses—collectively representing shippers, receivers, 4 transportation consultants, 12 motor carriers which wish to interline, chambers of commerce, and port authorities—testified in support of the applications. The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a georgraphic basis. We have accordingly restated the supporting evidence in appendix E to this report. Those shippers which support only Roadway or Floyd & Beasley, applicants which did not file exceptions to the recommended denial of their respective applications, are neither discussed in the appendix, nor included in the statistical data below. Roadway has since acquired control of much of the authority it sought herein and can now generally serve the shippers which supported its application. The shippers which supported Floyd & Beasley are located generally in the same territory as those treated in appendix E and their evidence, although not specifically discussed herein, has

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been considered. As a consequence, the evidence presented by 824 supporting witnesses is summarized in appendix E and below.

Generally, the involved traffic moves (1) between points in the Southwest, on the one hand, and, on the other, points in the Southeast, Middle Atlantic, and New England States; (2) between points in the Midwest, on the one hand, and, on the other, points in the East and Southeast; and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississipi. It consists of an exteremely wide variety of commodities (the examiners catagorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture.

As indicated above, the shippers[18] are listed geographically in appendix E according to the location of their facilities at which they receive or from which they ship the involved traffic. When a shipper has facilities in more than one State, it has been listed more than once, except when the involved movements are between its own facilities. Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest;[19] 340 shippers in the Southeast,[20] 44, collectively, in the Middle Atlantic and New England States;[21] and 42 in the Midwest.[22]

In addition to shipper evidence in support of its application, Johnson submitted an economic study prepared by the chairman of the Dep[illegible]ent of Transportation, University of Houston. The study develops [illegible] theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth. In this respect it is noted, as set forth in appendix F, that on

[18] The term "shippers," as used herein, represents the witnesses which appeared in support of the applications. It is noted that sometimes more than one witness appeared for the same shipper, that the same witness may have appeared and been counted more than once, and that some of the witnesses do not represent shippers in the strict sense of the word.

[19] Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas.

[20] Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia.

[21] Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island.

[22] Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri.





the whole the population in the States in which supporting shippers are located (except Mississippi), has increased substantially between 1960 and 1970.

*Southwest.*—The 84 Arkansas shippers collectively have facilities at 83 points in this State, with the greatest concentration of shippers at Fort Smith (9), El Dorado (8), Fayetteville (8), Little Rock (8), and Springdale (8).[1] Of the six shippers with facilities in Colorado, three are located at Denver, two at Colorado Springs, and one at Littleton. The 84 Louisiana-based shippers have facilities at 29 points, with most located at Baton Rouge (19), Shreveport (14), New Orleans (11), and Monroe (8).[2]

The one shipper with facilities in New Mexico states that, in addition to having stores in this State, it has a warehouse at Albuquerque, N. Mex. Of the 32 shippers with facilities in Oklahoma, 16 are located at Tulsa, 9 at Oklahoma City, 5 at Muskogee, and 1 at each of the points of Spiro, Stigler, Stillwell, Tahlequah, and Westville. Also, two shippers indicate that they have stores located in Oklahoma.[3] The 275 supporting Texas shippers collectively have facilities at 55 points in this State. One hundred and thirty-two shippers have facilities at Dallas (which includes the Dallas Chamber of Commerce), 57 at Houston, and 20 at Fort Worth.[4]

[1] With respect to the remaining Arkansas points, one shipper is located at Ashdown, three at Bentonville, one at Blytheville, one at Cabot, three at Camden, five at Conway (including one motor carrier), three at Crossett, two at Gravette, three at Hamburg, one at Hiwassee, two at Hope, one at Lincoln, one at Lowell, three at Magnolia, one at Marked Tree, one at Osceola, one at Pine Bluff, one at Rector, two at Rogers, two at Russellville, three at Searcy (including one motor carrier), one at Sheridan, six at Siloam Springs, three at Texarkana (including the chamber of commerce thereof), and one at Van Buren. Two Arkansas shippers 111.(240) and 25.(452)] indicate that they have a number of stores in this State. Considering Arkansas shipper 11.(240), it should be noted, as is described in footnote 1 of appendix E, that the number 11 indicates that this is the 11th witness, in order of appearance, which has facilities in Arkansas, and that the number in the parenthesis is the witness number used by the examiners.

[2] The number of shippers located at Shreveport and Monroe includes one motor common carrier which wishes to interline at both of these points. The remaining Louisiana shippers are located at Abbeville (1), Addis (1), Alexandria (2), Alpine City (2), Bastrop (1), Bossier City (3), Golden Meadow (1), Haynesville (1), Houma (1), Kenner (1), Lafayette (5), Lake Charles (3), including the harbor and terminal district, Lockport (1), Mansfield (1), Morgan City (1), Opelousas (1), Pineville (1), Rayne (1), Ruston (1), St. Francisville (1), Springfield (1), Supreme (1), Thibodeaux (1), West Monroe (3), and Zachary (1). Three Louisiana shippers, viz, 7.(240), 22.(452), and 83.(917) indicate that they have stores located at numerous points in Louisiana.

[3] See shippers 2.(452) and 26.(828) under the Oklahoma heading. The latter also has a warehouse at Oklahoma City, Okla.

[4] Additionally, seven shippers have facilities at Texarkana (which includes the chamber of commerce thereof); six at both San Antonio and Tyler; five at both Amarillo and Wichita Falls; four at both Arlington and Greenville; three each at Garland, Graham, and Grand Prairie; two each at Bonham, Jasper, Nacogdoches, Paris, and Sulpher Springs, and one at each of the points of Austin, Baytown, Beaumont, Brechenridge, Bryan, Clarksville, Cleburne, Corpus Christi, Denison, Electra, Everman, Ferris, Floresville, Hearne, Irving, Itasca, Jacksonville, Kaney, (footnote continued on next page)

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*Southeast.*—Of the 84 supporting shippers located in Alabama, 46 have facilities at Birmingham;[27] 8 at Montgomery (including a motor common carrier which wishes to interline); 5 at Mobile; 4 at Gadsden; 3 at each of the points of Decatur, Tuscaloosa, and Pelham; 2 at each of the points of Bessemer, Huntsville, and Scottsboro; and 1 at each of the points of Boaz, Brent, Centre, Cullman, Florence, Jackson's Gap, Leeds, Prattville, Springville, Union Springs, Uniontown, and West Gate. The 15 supporting shippers located in Florida have facilities at Miami (9), Pensacola (6), Lakeland (1), and Orlando (1). Most of the 114 shippers with facilities in Georgia are located at Atlanta (87), with the remainder located at Columbus (7), Augusta (6), Griffin (4), and a number of other points in Georgia.[28] One shipper is located at Louisville, Ky.

In Mississippi, 54 shippers have facilities at Cleveland (1), Florence (1), Greenville (7), including the port commission and the chamber of commerce thereof, Greenwood (3), Indianola (2), Jackson (32), Laurel (1), Meridian (3), Moss Point (1), Port Gibson (1), and Vicksburg (2).[29] Twenty-five of the supporting shippers have facilities at 15 points in North Carolina. Seven are located at Charlotte, four at Statesville, three at Gastonia, two at both Cornelius and Greensboro, and one at each of the points of Asheville, Forest City, Hickory, High Point, Huntersville, Landis, Old Fort, Raleigh, Sodeyco, and Waynesville. The 25 shippers with facilities in South Carolina are located at 20 points. Three are located at Belton and Greenville (including two motor carriers, one of which, although it is located at Hartsville, S.C., wishes to interline at Greenville), and two are located at Seneca, S.C. One shipper is located at each of the remaining specified South Carolina points.[30] Twelve of the 17 supporting shippers with facilities in

(footnote 26 continued)

Longview, McGregor, McKinney, Marlin, Nocona, Palestine, Perryton, Pineland, Pittsburg, Plano, Port Arthur, Seguin, Sherman, Smith's Bluff, Taylor, Temple, Waco, Winnsboro, and Wolfe City. Some shippers have stores at numerous points in Texas, i.e., 25(240) under the Texas heading.

[27] Included are shippers located at points in the commercial zone of Birmingham such as Irondale, Ala.

[28] Three shippers have facilities at Rome, two at each of the points of Hampton, LaGrange, Savannah, and Stone Mountain; and one at each of the points of Cedartown, Chickamauga, Claxton, Conyers, Cordele, Dalton, Hartwell, Milledgeville, Sparta, and Tucker, Ga.

[29] Shipper 52(917) under the Mississippi heading indicates that it has stores located in this State.

[30] Aiken, Anderson, Bethune, Blacksburg, Charleston, Chester, Clearwater, Easley, East Greenwood, Georgetown, Lyman, Mauldin, Orangeburg, Rock Hill, Spartanburg, Startex, and Westminister. Also shipper 1,413) under the South Carolina heading indicates that it receives traffic at its 29 plants located at numerous points in South Carolina. Another shipper, 18(574), under South Carolina, indicates that it has facilities in this State.





Tennessee are located at Chattanooga, while 5 have facilities at Memphis and 1 at each of Murfreesboro and Nashville. Two of the five Virginia shippers have facilities at Richmond, Va. The remainder are located at Petersburg, Va.

*Middle Atlantic and New England States.*—The four supporting Connecticut shippers have facilities at six points: one shipper is located at each of the points of Jewett City, Rockville, Waterbury, West Hartford, and the shipper located at Waterbury also has facilities at Wallingford and Bridgeport. The sole supporting shipper with facilities in Delaware is located at Rockford. Three shippers have facilities at Baltimore, Md. Eight, collectively, have facilities at 12 points in Massachusetts: three are located at Fall River and one at each of the points of Ashland, Charlestown, Dodgeville, Foxboro, New Bedford, North Eastern, Springfield, Waltham, Watertown, Westboro, and Worcester. One shipper has facilities at Nashua, N.H. Nine collectively have facilities at 11 points in New Jersey: two are located at Elizabeth, and one shipper is located at each of the remaining named New Jersey points.[31] The five supporting New York shippers collectively have facilities at six points: one shipper is located at each of the points of Broklyn, New York City, Orangeburg, Pearl River, and Pleasant Valley. The New York City shipper also has facilities in Buchanan, N.Y. Of the eight supporting shippers with facilities in Pennsylvania, two are located at York and one at each of the points of Fort Washington, Marcus Hook, Mount Holly Springs, Philadelphia, Pittsburgh, and Pottsville. Additionally, a motor common carrier wishes to interline at Harrisburg, Pa. One of the four Rhode Island shippers has facilities at Warren and Kenyon; while the remaining three have facilities, respectively, at Lincoln, Pawtucket, Warren, and Woonsocket.

*Midwest.*—Of the 15 Kansas shippers, 10 have facilities at Kansas City, including 1 motor common carrier, and 2 are located at each of the points of Loring, Topeka, and Wichita.[32] Most of the 27 supporting shippers with facilities in Missouri are located at Kansas City (16), including 2 motor common carriers which wish to interline. Five supporting shippers have facilities at Springfield, Mo., and one shipper is located at each of the remaining named Missouri points.[33]

Bound Brook, East Rutherford, Hillside, Linden, Moorestown, Morris Plains, Orange, Plainfield, Princeton, and Wharton.

[32] Shipper 2(452) under the Kansas heading indicates that it has stores located in Kansas.

[33] Carl Junction, Marshfield, Noel, St. Louis, Stockton, and Webb City. Shipper 4(452) under the Missouri heading indicates that it has stores located in a portion of Missouri.

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The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic. Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive. The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1- to 7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown to have received between 3- and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are respresentative of the service these shippers are and have been receiving.

About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic.[14] Thus, Roadway assertedly has refused to handle shipments, including furniture, and has informed certain shippers that it does not want to handle their traffic. At Springfield and Marshfield, Mo., it has refused to handle shipments weighing less than 5,000 pounds. Ryder has informed a number of shippers located at Chattanooga that it would not provide service between this point and points in Alabama, Georgia, Mississippi, North Carolina, and South Carolina. These shippers were provided a list by Ryder indicating those points which Ryder was no longer serving. Ryder has also informed other shippers that it does not wish to handle their traffic, and it has a 3-line haul restriction on traffic moving to Mississippi. Campbell Sixty-Six refused to handle traffic

[14] Alabama, Arkansas, Georgia, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.





to a number of Mississippi points during 1966, and it has refused to handle some of supporting shippers' traffic. Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers.

Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States.[15] A number of shippers at Atlanta have experienced difficulty in obtaining pickup service especially on shipments to points in Louisiana and Mississippi. The shippers collectively complain that approximately 30 of the protestants either failed to make timely pickups and shipments were delayed by 1 or more days, or they failed to make timely deliveries, forcing the receivers either to pick up the incoming shipment at the carrier's dock or wait until the carrier delivered the shipment 1 or more days late. Most of shippers' pickup and delivery complaints are registered against Ryder, Roadway, and Campbell.

Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing. A number of the shippers indicates that normally the interchange of LTL traffic involves, at a minimum, 24 hours. In addition to the difficulties inherent in interline service, shippers complain that tracing is unsatisfactory when multiple lines are involved; that shipments are split in transit and consequently portions of the shipment are lost or delayed; and that they find it difficult to obtain prompt claim service when two or more carriers are involved. Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service. The shippers with

[15] Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.

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movements to points in the Southwest and Midwest generally receive complaints from customers located in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas. Most of the complaints are voiced by customers in Louisiana, Mississippi, and Texas. The shippers in the Southwest receive complaints from customers located in the Southeast, Middle Atlantic, and New England States, with most of the complaints coming from customers in Florida, Georgia, and Mississippi.

The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts.[9] Also, in some cases shippers have suffered losses under contract penalty clauses for failure to live up to commitments because of transportation problems. Many indicate that they or their customers are unable to maintain minimum inventories or meet production schedules. Generally, many shippers submit that because of the inadequacy of existing transportation services, they are not only unable to expand but they find it difficult properly to serve their existing customers. In seeking a solution, some have established distribution warehouses or have reverted to private motor carriage.

While the examiners found that a substantial number of the supporting shippers had not thoroughly investigated existing services, a review of the record indicates that many have made such an investigation and have in fact used the available single-line and a number of feasible joint-line services. While the shippers may not have utilized every possible combination of joint-line service available, they have collectively tried most, if not all, of the available combinations and found them inadequate. Admittedly, some of the shippers failed to specify routings. These failures, however, must be viewed in the light of the assertions of a number of the shippers that even when they routed their traffic they were unable to obtain adequate service, and this function was relegated solely in an attempt to obtain better service.

### PROTESTANTS

The evidence of the opposing carriers, as summarized by the examiners, is set forth in appendix G to this report. Those protestants opposing only the application of Roadway are not included in that summary.[10] For the most part, protestants are regular-route motor common carriers of general commodities which collectively, either

[9] Approximately 80 shippers in a total of 14 Southeast, Southwest, and Midwest States complained about lost business and customers.

[10] None of the protestants opposed only the application of Floyd & Beasley.





directly or through interchange, are authorized to serve the points here sought to be served by applicants.

As described in appendix G, 14 of the remaining 42 protestants introduced transit time studies of traffic handled between the involved points.[11] The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during the period or that traffic handled for specified shippers during a specified period. The 1-year study of all the relevant traffic handled by one carrier[12] demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.

### DISCUSSION AND CONCLUSIONS

In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time

[11] The examiners' treatment of the various protestants' transit time (elapsed time) studies is understandably not all-inclusive. It is sufficient for our purposes, however, and we see no need to expand on it inasmuch as any expansion would not affect our discussion of the studies themselves.

[12] This study was introduced by Consolidated.

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between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

As indicated, the four southwestern applicants (Herrin,[*] Red Ball, Strickland, and Jones) generally seek to extend their authority to southeastern gateways such as Birmingham and Atlanta, and the four remaining southern applicants (Deaton, Baggett, Bowman, and Johnson) propose to expand their operations into the Southwest, with Bowman also seeking to serve Missouri and Kansas points. As a consequence, the applications of these two groups of carriers differ

[*]The validity of characterizing Herrin (of Houston) as a southwestern carrier might be questioned in light of the fact that McLean, of Winston-Salem, N.C., has been substituted as applicant in No. MC-1124 (Sub-No. 206). It is noted, however, that (as will be discussed hereinafter) although Herrin seeks authority to serve southeastern points, with only some exceptions (20 shippers located at Atlanta, 4 at Columbus, 2 at Mobile, and 3 at Memphis) shippers supporting this application are located in the Southwest, or more specifically, 29 are located in Louisiana and 40 in Texas. More important is the fact that even though Herrin holds authority to serve southeastern points, by this application it is seeking to extend its operations (except with respect to Memphis) between points in the Southwest it can presently serve and points in the Southeast which it either cannot serve or to which it can render only limited service. Thus, the status of this carrier as a southwestern applicant, insofar as this proceeding is concerned, has not been altered by the substitution of McLean as applicant.





not only in their specifics (i.e., the points or territories that would be served) but also as to those members of the public to whom their service would primarily be proffered.

In *Mayfield Sons Trucking Co. Extension—Kentucky*, 108 M.C.C. 651, at page 657 (1969), it was stated that:

> the Commission favors the existence of sufficient carrier capacity to encourage competition and provide incentives for real innovation and improvement to the public; however, it will not approve the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers. *M. R. & R. Trucking Co., Ext.—Birmingham*, 105 M.C.C. 69, at page 80.

It has also been pointed out, in *Motor Freight Corp. Ext.—Pottawattamie County, Iowa*, 106 M.C.C. 654, 657 (1968), that: "Multiple-application proceedings require care not only to avoid the prolifferation of operating authorities not needed by the shipping public, but also *** [to select those] carriers with the ability to perform the proposed service." We must decide which of the applicants here before us should receive authority inasmuch as (a) there are motor common carriers already operating generally between the territories applicants propose to serve, (b) the present applications may broadly be characterized as those of either southwestern carriers proposing to expand their operations to points in the Southeast or southern carriers seeking, for the most part, to extend their operations to points in the Southwest, (c) there is not, in our opinion, sufficient traffic to sustain all of the additional motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest. Cf. *Pan-American Bus Lines Operation*, 1 M.C.C. 190, at page 203 (1936).

Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation

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services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, and others that will be discussed in connection with our grants of authority to each individual carrier, we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson.

*The southwestern applicants.*—Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar. With respect to this latter category of applicants, it is our opinion that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Refrigerated Xpress, Inc., Ext.—Denison, Iowa*, 96 M.C.C. 233, 237 (1964), are as follow: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. Cf. also *H. C. Gabler, Inc., Ext.—Cement from Md. and Pa. Counties*, 86 M.C.C. 447, 469-470 (1961), and cases cited therein. Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones; that the number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest; that with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones; that Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a)



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Herrin proposes 6 additional southeastern terminals, the reestablishment of a terminal at Little Rock, and would add 41 tractors, 80 trailers, and 67 trucks to its fleet, (b) Strickland proposes to establish 4 additional southeastern terminals, and (c) Jones proposes to establish terminals at 2 southeastern points (Atlanta and Birmingham) and at 2 southwestern points (El Dorado and Texarkana); that Red Ball presented 130 supporting witnesses and an additional 23 witnesses specifically supported its application, whereas (a) Herrin presented 87 witnesses and an additional 11 supported its application, (b) Strickland presented 102 shipper witnesses, and an additional 24 supported its application; and (c) Jones presented 90 witnesses and an additional 11[7] supported its application; and that Red Ball filed its application on May 16, 1965, Herrin on June 18, 1965, Strickland on June 16, 1965, and Jones on June 14, 1965. Clearly, of the southwestern applicants, Red Ball has made the superior showing with respect to each of the above-described criteria, and, therefore, it is selected to receive the authority for which a public need has been found in this report. Moreover, none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the extensive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other, the territory Red Ball now serves. Cf. *Herrin Transp. Co. Extension—Georgia*, 95 M.C.C. 700, 715 (1964).

Against these factors, Herrin submits that it is the logical choice because (a) it now has a service and alternate route into Atlanta, (b) it does not seek to expand its operations into any new point inasmuch as it now conducts operations through or to, in the case of Atlanta and Pensacola, all the points which it here seeks to serve, and (c) Red Ball is not now a competitive factor in Georgia nor does it conduct operations even for operating convenience only into Birmingham and Atlanta. Herrin further points out that Atlanta and Birmingham are large distribution centers and that the gulf coast region in its territory west of the Mississippi River is a logical distribution area. This latter statement signifies the import of its application. Albeit this applicant asks to have certain restrictions on its existing authority removed with respect to Pensacola and Atlanta, and seeks to serve (excluding consideration of Atlanta and Birmingham) Mobile, Montgomery, Columbus, and Jackson, it produced evidence (excluding shippers and receivers located in the Southwest) of only four shippers located at Columbus, two at Mobile (Red Ball now serves between Mobile and Jackson and points in the Southwest), and three at Memphis. Its

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application, like those of the other southwestern applicants, was filed primarily for authority to serve southwestern shippers and receivers on traffic moving between the Southwest, on the one hand, and, on the other, Birmingham and Atlanta. Clearly, Red Ball is in a better position than Herrin to render this service. To the extent that Herrin's proposal differs from Red Ball's, the former has not shown that the present or future public convenience and necessity require that these portions of its application be granted.

The examiners found that from a commodity standpoint, the only need shown for additional service relates to LTL shipments of commodities requiring refrigeration and not generally to the transportation of commodities requiring protective service. It appears that 4 of the 19 shippers whose evidence has been summarized by Jones require protection from freezing not heat, 3 require truckload and not LTL service, and 6 ship candy and would require refrigerated service only on a seasonal basis.

Although there may thus be some limited need for LTL refrigerated service, such service was proposed by Jones only in conjunction with its basic proposal to render regular-route general-commodity service. It has not been shown that the present or future public convenience and necessity require Jones' proposed regular-route services. By the same token, Jones has not shown a need for the regular-route transportation of specified commodities,[4] and any grant of authority made herein would have to be irregular-route in nature. The examiners found, however, that any need was for LTL refrigerated service which could not rationally be authorized because, as pointed out in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1, at page 48 (1967), "[r]estrictions limiting service to the handling of less-than-truckload shipments are indefinite and impractical, ***would be difficult to enforce, and ***will not be imposed by this Commission." We conclude that Jones' application also should be denied in its entirety.

*The southern applicants.*—Of the four remaining southern applicants, we are of the opinion that Bowman has pursuasively demonstrated a need for its services between specified points in Mississippi, Kansas, Missouri, Arkansas, Louisiana, and Texas, on the one hand, and, on the other, those points in the Southeast and East that it presently serves. This showing is particularly strong with respect to the first three States named.

Approximately 135 witnesses in 13 States support that portion of Bowman's application seeking authority to serve the 10 specified

[4] As pointed out in *Motor Common Carriers of Property—Routes and Service*, 88 M.C.C. 415, 430 (1961), regular-route authority has sometimes been granted to motor common carriers of only a few commodities, but in recent years such a practice has been uniformly avoided.





Mississippi points. Over 100 of these have experienced difficulties with inadequate, inconsistent, and excessive transit times. The witnesses' transit time studies show that between 3- and 4-day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points, with transit times ranging between 1 and 7 days. From other points in the territory Bowman presently serves, transit times to Mississippi range from 3 to 21 days. Approximately 25 supporting witnesses have complained of either refusals by authorized carriers to handle their traffic, and of carrier embargoes or restrictions; and about 50 have experienced pickup and delivery problems. A number of the witnesses further complain of loss, damage, difficulties with interline service, lost business and accounts, and customer complaints. Collectively, Deaton, Dixie, Campbell, Roadway, and Ryder are cited for refusing to handle a number of the supporting shippers' traffic to Mississippi from points in the Southeast. At least one of the shippers indicated that it would be forced to open a warehouse in Mississippi unless the transit time can be improved. Another shipper represented that it would be forced to switch its shipping point on traffic to Mississippi from the Southeast to the Southwest. Other witnesses located at such points in Mississippi as Jackson and Greenville have discontinued shipping from Atlanta because of the problems they have experienced.

As pointed out by Bowman, two protestants to its application (Campbell and Herrin) withdrew their opposition, and of the remaining protestants to the Mississippi portion of its application, Dixie serves only 4 of the 10 Mississippi points here sought to be served by Bowman and maintains terminals at only 2 of these points.[5] Gordons does not actively solicit any traffic between Atlanta and Birmingham, on the one hand, and, on the other, any point in Mississippi south of U.S. Highway 82, which would include, as here pertinent, Meridian, Jackson, Vicksburg, Laurel, Hattiesburg, Moss Point, and Pascagoula (or 7 of the 10 points Bowman seeks to serve). Shippers complain that Ryder is not rendering adequate service to Mississippi, and that it has refused to handle certain traffic to points in this State. Deaton holds authority to render single-line service to some of the involved Mississippi points, but it assertedly interlines this traffic. Since the hearings in the instant proceedings, Roadway, Braswell, and GFA have been authorized to serve points in Mississippi. While the single-

[5] The fall 1971 edition of the American Motor Carrier Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points, Jackson.

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line service which Roadway now holds authority to provide will be duplicated to or from a number of the involved Mississippi points, the coverage of its operating rights in southern Alabama and Georgia is limited and it does not hold authority to render regular-route service at points in Florida. Braswell's single-line operations to or from Vicksburg, Jackson, and Meridian extend only as far east as Atlanta, and its authority in Alabama is limited to only the major points of Birmingham and Montgomery. GFA now holds authority to serve Jackson, Hattiesburg, Laurel, and Meridian, but its single-line operations in the Southeast embrace only a limited territory.

Approximately 80 witnesses support the Kansas-Missouri portion of Bowman's application. Over 60 of these complain about inconsistent and excessive transit times, and a number complain about pickup and delivery problems, loss, damage, shortage, tracing difficulties, misrouting, interline problems, unsuitable or inadequate equipment, customer complaints, and lost business and penalties. Generally, these witnesses have shown that the transit times on a substantial volume of their traffic between the Kansas-Missouri points Bowman seeks to serve and points in the Southeast is at least 1 day more than is proposed by Bowman. Roadway and Transcon have declined to handle some of the supporting witnesses' traffic. Shippers with traffic moving between points in Florida and points in the involved Kansas-Missouri territory represent that they must rely on joint-line service; and while those which utilize Bowman's service indicate that it is satisfactory, they are not satisfied with the service of the carriers with which Bowman interlines. Bowman submits that only three general-commodity motor carriers (Gordons, Watson-Wilson, and T.I.M.E.*) oppose this portion of its application, and while holding authority to serve a broad territory in the South, they collectively serve only Birmingham and Mobile, Ala.; Nashville, Chattanooga, and Knoxville, Tenn.; Atlanta, Augusta, Athens, and Rome, Ga.; and Charleston and Greenville, S.C. Assertedly, even if these carriers were to serve each of their authorized points, there would still be no service from the entire State of Florida; no service from those points in Georgia south of U.S. Highway 80; no service from those points in South Carolina north of Greenville, Columbia,

*It is noted that in *T.I.M.E.-DC, Inc.—Investigation & Revocation of Certs.*, 113 M.C.C. 897 (1971), it was found that respondent T.I.M.E. has been in violation of section 216(b) of the Interstate Commerce Act and has failed to comply with the terms and conditions of its certificates in that it has not been rendering reasonably continuous and adequate service in the transportation of general commodities at numerous points in, among other States, Missouri and Tennessee. That proceeding is pending on petition.





and Charleston; and no service from the entire States of North Carolina and Virginia.

The extent of Roadway's opposition to Bowman's application has been raised in pleadings. In exhibit 1865, at pages 2 and 3, Roadway indicates that it opposes the Bowman application insofar as authority is sought (1) between Birmingham, on the one hand, and, on the other, Houston and Fort Worth, (2) between Houston and Dallas, and (3) between Memphis and West Memphis, on the one hand, and, on the other, Oklahoma City. This is qualified by the statement on page 5 of the exibit that appendix 2 thereto, which is Roadway's systems map, shows the Roadway points that are in direct conflict with points of the applicants. The map includes Kansas City, Carthage, Topeka, and Springfield. The examiners did not include Roadway in their list of carriers offering single-line service between Atlanta and/or Birmingham, on the one hand, and, on the other, Kansas City; and Roadway has not specifically taken exception to this omission. While Roadway technically opposes the Kansas-Missouri portion of Bowman's application, it is noted that its evidence is directed primarily to traffic moving between Texas points, on the one hand, and, on the other, Roadway terminal points in Georgia, North and South Carolina, Tennessee, Alabama, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. In any event, Roadway's authority in southern Georgia and Alabama is limited and it does not render service to points in Florida. Although Consolidated acquired authority to serve Atlanta since the hearing and can thus render single-line service between this point, on the one hand, and, on the other, Kansas City and Springfield, its operations in the Southeast are limited.

Additionally, Bowman has shown that the present and future public convenience and necessity require the extension of its operations to points in the remaining States it proposes to serve. The evidence of the supporting witnesses establishes a clear and convincing public need for single-line motor carrier service between the broad southeastern and eastern seaboard territory served by Bowman, on the one hand, and, on the other, the Arkansas points it proposes to serve. Approximately 100 witnesses supported this portion of Bowman's proposal. Many expressed a need for single-line service between the Arkansas points, on the one hand, and, on the other, points in Florida, Georgia, and the Carolinas (other than Birmingham, Atlanta, and Charlotte) for which no such service is available. Existing carriers which hold authority to operate between the Arkansas

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points and points which Bowman presently serves are limited territorily either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants proposes such an extensive service.

Similarly, the protestants are unable to provide the full scope of the single-line services proposed by this applicant between the Louisiana points (excluding New Orleans from consideration at this time) it proposes to serve and the territory it currently serves. Over 150 witnesses support this portion of Bowman's proposal, and they too have demonstrated material inadequacies in the transportation services they now receive. With respect to New Orleans, the approximately 30 shippers supporting this aspect of Bowman's application have shown that the service they are receiving between specified points in Alabama and Tennessee, on the one hand, and, on the other, New Orleans is not adequate. None of the protestants provides single-line service between all of the points Bowman serves in its authorized territory here under consideration and New Orleans. Regarding Texas, it is noted that more witnesses from the Dallas-Fort Worth area testified in support of Bowman's application than any of the other applicants. Also, witnesses from numerous points throughout Bowman's authorized territory testified in support of this portion of its application. Many of these shippers do not presently have single-line service to this important area, and none of the other applicants proposes to render the extensive single-line services to be proffered by Bowman. Of the carriers which operate between the southern Texas points which Bowman proposes to serve and its authorized territory, only Roadway and Ryder can provide a service even remotely comparable to that proposed. Shippers' testimony, however, demonstrates that the latter is not rendering adequate service, whereas the former's authority in the Southeast is, as noted above, limited in certain respects.

We recognize that, as was pointed out in *Hancock-Trucking, Inc., Ext.—Gulf and West Coast Routes*, 62 M.C.C. 513, 535 (1954), "the national transportation policy does not tolerate the thought that all shippers and all points are entitled to single-line motor carrier service." Many shippers have nevertheless demonstrated, on the present record, that they require the single-line service here authorized to be provided by Bowman, and that the lack of such service has been harmful to them. See *Roadway Exp., Inc.,*





*Ext.—Birmingham, Dallas, Houston*, 82 M.C.C. 689 (1960). Thus, we believe that Bowman has also shown a need for an extension of its authority into Arkansas, Louisiana, and Texas in the manner hereinafter set forth in our findings.

Johnson proposes an "overhead" single-line service between a number of major points in Texas, Louisiana, and Mississippi, on the one hand, and, on the other, points it serves along the eastern seaboard and in the gulf territory. Its application is supported by 236 witnesses located throughout the areas it serves or proposes to serve. Their testimony establishes that the existing service on small shipments traffic between the involved territories is generally inadequate. Many of the supporting witnesses validly complain with respect to lengthy and undependable transit times; and their studies, considered on the whole, demonstrate that inconsistent and excessive transit times have been experienced on a substantial portion of the involved traffic. Complaints also were voiced by many of the shippers with respect to poor pickup and delivery service, tracing problems, and excessive loss and damage. Many of the shippers' problems can be attributed to the existing joint-line motor service. As pointed out by Johnson, of the major eastern seaboard carriers which compete with it and render a portion of the involved joint-line services, only Akers opposes Johnson's application. Major east coast motor common carriers such as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, and R. C. Motor failed to participate in this proceeding; and it is therefore apparent that important segment of the involved joint-line motor carrier system does not oppose the Johnson application.

Of the single-line protestants which serve between the points Johnson proposes to serve and its present territory, Ryder does not hold authority to serve the Dallas-Fort Worth area and much of the Carolinas; Roadway holds authority to perform the proposed "overhead" service but its service was the subject of many of the shippers' complaints; and the authorities of T.I.M.E. and Transcon are limited to such an extent that they can provide only a portion of the service proposed by Johnson. It is true that McLean now holds authority to provide single-line service comparable to that proposed by Johnson, but that carrier did not protest Johnson's application and there is no evidence on this record that it is ready and willing to furnish the needed service. In our opinion, Johnson has demonstrated that there is a need for its proposed service, except to the extent set forth below. The stated purpose of Johnson's seeking

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authority to operate over the alternate route between Shreveport and Baton Rouge, La., is solely to enable Johnson to move its empty equipment from the northern route to the southern route for use at southeastern points. Inasmuch as specific authority is not required to perform this type of operation, however, and because Johnson has not otherwise shown any reason for a grant of such authority, this portion of its application will be denied.

Deaton and Baggett admittedly filed defensive applications herein in an effort to have all of the applications denied. They concede that their applications represent an attempt to keep pace with any further realignment of existing motor carrier operational patterns; and each, in its "conditional" exceptions, contends that the granting of its application would be a necessary corollary to a grant of any of the other applications. On brief, Deaton asserted that all of the applications should be denied inasmuch as applicants had failed to show a need by the shipping public for their services, and because any expressed need could be met by existing carriers, including those authorized to perform service in the involved territory after the record herein was closed. Deaton does not take exception to the examiners' denial of its application, along with the other applications. Thus, it concedes that it has not shown a need for its proposed service. A grant of authority to this carrier cannot be justified solely on the basis that, without it, Deaton will not be able to survive and remain a viable competitve carrier in the area if any of the other applications are granted. Nor do we believe that Deaton has shown on this record that the above-described grants to Red Ball, Bowman, and Johnson will materially adversely affect its operations. Deaton's application will therefore be denied. Baggett submits that although it is still a "defensive" applicant, it became a "serious" applicant after failing to cause all applicants to withdraw; and it believes that the record has disclosed a public need for its proposed service. Baggett's application will also be denied. While it, unlike Deaton, is now unwilling to concede that it has failed to show a need for its proposed service, we think it plain that this is indeed the case. Baggett, by its "conditional" exceptions and weak shipper support (approximately 50 shippers support its application) has demonstrated tht it is not interested in the public convenience and necessity but rather only in maintaining the competitive *status quo*.

Undoubtedly, granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier services. It also is true that the above-described grants of authority will subject some of protestants' traffic





to the possibility of diversion. With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected" by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. *Liberty Trucking Co. Ext.—Lake Mills, Wis.*, 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience.

*Other matters.*—A few other matters require comment. First, some of the protestants challenge the feasibility of the proposals of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in *West Brothers Inc., Extension—Baton Rouge, La.*, 106 M.C.C. 792, 799 (1968), modified on other grounds at 108 M.C.C. 485 (1969):

> Evidence that applicant's transit time for existing services over a shorter distance is more than *** [the proposed transit time] is not conclusive proof that it will not render *** [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.

Additionally, Johnson has revised its operations and effective March 13, 1966, it commenced using two-man teams which would be utilized on a direct nonstop basis between Charlotte and the seven proposed terminal points here under consideration.

Second, inasmuch as the authority sought by Red Ball partially duplicates authority presently held by this applicant, the grant of authority made herein, to the extent of such duplication, shall be construed as conferring not more than a single right. Third, although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the

"In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Cambell, thereby rendering the issue as to the vulnerability of the former's operations moot.

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use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language. Inasmuch as Moss Point, Miss., lies within the commercial zone of Pascagoula, Miss., no specific authority is required to enable Bowman to serve the former point in light of the findings below. See *Commercial Zones and Terminal Areas*, 54 M.C.C. 21, 108 (1952); 49 CFR 1048.101 and 1049.1. Finally, with respect to Bowman, its grant of authority will be modified to conform to current Commission practice. Fourth, authority in terms of miles about a particular point will not be granted herein since it is administratively undesirable. See *Glennon Transports, Inc., Extension—New York, N. Y.*, 78 M.C.C. 157 (1958).

And last, Johnson indicates that it proposes to offer daily, scheduled, LTL service between Dallas and Savannah by tacking regular- and irregular-route authority. Clearly, the separate nature of the authorities would not be preserved if in fact Johnson provided such a service. As this represents only a minor aspect of Johnson's proposal, we think that its application should be granted with the understanding that the regular-route rights will not be used in combination with Johnson's existing irregular-route authority for the performance of an unauthorized regular-route service between Dallas and Savannah. We believe that otherwise the separate nature of Johnson's irregular-route rights can be maintained, but we do not wish to infer that any conversion of these operations into regular-route operations in connection with through service to and from points on the regular routes authorized herein will be condoned.

FINDINGS

In Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67), we find that applicants have failed to establish that the present or future public convenience and necessity require the proposed operations; and that these applications should be denied.

In No. MC-2229 (Sub-No. 132), we find that the present and future public convenience and necessity require operation by





applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) over the routes, between the points, and in the manner set forth in part I of appendix H to this report, (1) restricted against the transportation of traffic moving between Memphis, Tenn., and points in its commercial zone, on the one hand, and, on the other, Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and points in their respective commercial zones, (2) subject to the condition that the authority granted herein, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring 5 years after the effective date of the certificate to be issued herein, and (3) subject to the condition that to the extent such authority duplicates the authority presently held by applicant, it shall not be construed as conferring more than a single operating right.

In No. MC-94201 (Sub-No. 56), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) over the routes, between the points, and in the manner set forth in part II of appendix H to this report (1) restricted to the transportation of traffic moving from, to, or through Birmingham, Montgomery, and Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.; (2) with service at New Orleans restricted to traffic originating at or destined to points in Tennessee and those points in Alabama on and north of U.S. Highway 78; and (3) restricted against the transportation of (a) traffic originating at or received from connecting carriers at Memphis, Tenn., and points in its commercial zone and destined to points west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Louchiching Counties, Minn., to the international boundary line between the United States and Canada; or (b) traffic originating at points west of the line described in (3)(a) above and destined to or delivered to connecting carriers at Memphis, Tenn., and points in its commercial zone; and subject to prior publication in the Federal Register of notice of the authority granted herein.

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In No. MC-106401 (Sub-No. 18), we find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over the routes, between the points, and in the manner set forth in part III of appendix H to this report, subject to a restriction in part (1) of the grant to traffic moving from, to, or through Atlanta, Ga.; and subject to a restriction in part (2) of the grant to traffic moving from, to, or through Gulfport, Miss.

We further find that the applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18) are fit, willing, and able properly to perform such services and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that an appropriate certificate authorizing the above-described operations should be granted to each of the three above-described applicants; and that the applications in all other respects should be denied.

Upon compliance by each of the three applicants with the requirements of sections 215, 217, and 221(c) of the act and with our rules and regulations thereunder, an appropriate certificate will be issued that applicant.

An appropriate order will be entered.





APPENDIX A

*Authority sought*

No. MC-1124 (Sub-No. 206), filed June 18, 1965, as amended.

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.*

(REENTITLED)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA.

General commodities including classes A and B explosives (but excepting commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Serving the points of Birmingham, Mobile, and Montgomery, Ala.; Columbus, Ga.; Jackson, Miss., and Pensacola, Fla., as intermediate points on applicant's presently authorized regular routes.

(2) Serving as points of joinder only, the points of Atmore, intersection of U.S. Highways 29 and 80 near Tuskegee, Flomaton, Woodstock and Selma, Ala., and Poplarville, Miss.

(3) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to Macon, Ga., thence over Georgia Highway 87 to Jackson, Ga., thence over U. S. Highway 23 to Atlanta, and return over the same route, serving the intermediate points of Montgomery, Ala., and Columbus, Ga.; and serving Selma, Ala., and the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as points of joinder only.

(4) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 11, thence over U. S. Highway 11 to Birmingham, Ala., thence over U. S. Highway 78 to Atlanta, and return over the same route, serving the intermediate point of Birmingham, Ala.

(5) Between New Orleans, La., and Birmingham, Ala.:

From New Orleans over U. S. Highway 11 to Birmingham, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., and Poplarville, Miss., as points of joinder.

(6) Between Pensacola, Fla., and Flomaton, Ala.:

From Pensacola over U. S. Highway 29 to Flomaton, and return over the same route, serving no intermediate points, and serving Flomaton, Ala., as a point of joinder only.

(7) Between Woodstock, Ala., and Mobile, Ala.:

From Woodstock over Alabama Highway 5 to junction U. S. Highway 43 near Thomasville, Ala., thence over U. S. Highway 43 to Mobile, and return over the same route, serving no intermediate points, and serving Woodstock, Ala., as a point of joinder.

(8) Between Montgomery, Ala., and Atlanta, Ga.:

From Montgomery over U. S. Highway 80 to Tuskegee, Ala., thence over U. S. Highway 29 to Atlanta (also from Montgomery over Interstate Highway 85 to Atlanta)

*Herrin Transportation Company was merged into McLean Trucking Company, effective October 1, 1969, as authorized in No. MC-F-10121, *McLean Trucking Company—Control and Merger—Herrin Transportation Company* (not printed), decided August 5, 1969.

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and return over the same route, serving no intermediate points, and serving the junction of U. S. Highways 29 and 80 near Tuskegee, Ala., as a point of joinder only.

(9) Between Atlanta, Ga., and Columbus, Ga.:

From Atlanta over Georgia Highway 85 to Woodbury, Ga., thence over Georgia Highway 85E to Manchester, Ga., thence over Georgia Highway 85 and alternate U. S. Highway 27 to Columbus and return over the same route, serving no intermediate points.

(10) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U. S. Highway 31 (also over Interstate Highway 65) to Mobile and return over the same route, serving the intermediate point of Montgomery, Ala., and serving the point of Flomaton, Ala., as a point of joinder only.

(11) Between Selma, Ala., and Montgomery, Ala.:

From Selma over Alabama Highway 14 to Prattville, Ala., thence over U. S. Highway 82 to Montgomery and return over the same route, serving no intermediate points, and serving Selma as a point of joinder only.

(12) Between Mobile, Ala., and Baton Rouge, La.:

From Mobile over U. S. Highway 98 to Lucedale, Miss., thence over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 21 to Covington, La., thence over U. S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, and serving Poplarville, Miss., as a point of joinder only.

(13) Between Birmingham, Ala., and Columbus, Ga.:

From Birmingham, Ala., over U. S. Highway 280 to Columbus and return over the same route, serving no intermediate points.

RESTRICTION: Service proposed at the points and over the routes specified in paragraphs 1 through 13 above is restricted to traffic moving to, from or through Memphis, Tenn., or Monroe, New Orleans or Baton Rouge, La.

No. MC-2229 (Sub-No. 132), filed May 17, 1965, as amended.

RED BALL MOTOR FREIGHT INC. EXTENSION - ATLANTA, GA

General commodities including classes A and B explosives (but excepting household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.:

From Jackson over U. S. Highway 80 to junction U. S. Highway 29, thence over U. S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala., for purposes of joinder only:

From Meridian over U. S. Highway 11 to Tuscallosa, and return over the same route, serving no intermediate points.

RESTRICTION: Restricted against the transportation of property moving between Memphis, Tenn., and its commercial zone, on the one hand, and, on the other,





Greenville, Miss., Birmingham, Ala., or Atlanta, Ga., and their respective commercial zones.

No. MC-11207 (Sub-No. 233), filed May 28, 1965, as amended.

DEATON TRUCK LINE, INC., RE-ENTITLED DEATON, INC. EXTENSION
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), over irregular routes:

(1) Between Atlanta, Ga., on the one hand, and, on the other, Monroe and Shreveport, La., Dallas and Fort Worth, Tex., and points within 10 miles of Dallas and Fort Worth.

(2) Between New Orleans, La., on the one hand, and, on the other, Baton Rouge, La., Orange, Beaumont, Texas City, and Houston, Tex., and points within 10 miles of Houston.

RESTRICTION: Restricted against local service between New Orleans and the points specified.

No. MC-18088 (Sub-No. 36), filed May 18, 1965, as amended.

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION -
DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

(2) Between Atlanta, Ga., and Houston, Tex.:

From Atlanta over U. S. Highway 29 to Opelika, Ala., thence over Interstate Highway 85 to Montgomery, Ala. (also from Opelika over U. S. Highway 29 to junction U. S. Highway 80, thence over U. S. Highway 80 to Montgomery), thence over U. S. Highway 31 to Mobile, Ala., thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 to junction U. S. Highway 165 at Kinder, La., thence over U. S. Highway 165 to junction U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge and Lake Charles, La., Orange, Beaumont and Texas City, Tex., and those within 10 miles of Houston.

(3) Between Montgomery, Ala., and junction U. S. Highways 11 and 80 near Cuba, Ala., over U. S. Highway 80, for purpose of joinder only, serving no intermediate points.

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(4) Between junction of U. S. Highways 71 and 190 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, for purpose of joinder only, serving no intermediate points.

(5) Between junction U. S. Highway 78 and Alabama Highway 21 near Anniston, Ala., and the junction of U. S. Highways 231 and 80 near Montgomery, Ala., for purpose of joinder with applicant's irregular-route operations:

From junction U. S. Highway 78 and Alabama Highway 21 over Alabama Highway 21 to junction U. S. Highway 231, thence over U. S. Highway 231 to junction U. S. Highway 80, and return over the same route, serving the intermediate point of Sycamore.

RESTRICTION: Restricted to traffic moving between points east of the Mississippi River except Baton Rouge, La., on the one hand, and, on the other, points west of the Mississippi River and Baton Rouge.

No. MC-59680 (Sub-No. 147), filed June 16, 1965.

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, GA.

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U.S. Highway 82, thence over U. S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U. S. Highway 82 in Arkansas.

(2) Between Atlanta, Ga., and Shreveport, La.:

From Atlanta over U. S. Highway 78 to Birmingham, Ala., thence over U. S. Highway 11 to junction U. S. Highway 80, thence over U. S. Highway 80 to Shreveport, and return over the same route.

Intermediate point: Jackson, Miss.

Joinder point: Monroe, La.

No. MC-76177 (Sub-No. 304), filed July 30, 1965.

BAGGETT TRANSPORTATION COMPANY EXTENSION DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, blasting supplies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U. S. Highway 29 to junction U. S. Highway 80 (near Tuskegee, Ala.), thence over U. S. Highway 80 to Montgomery, Ala. (also from Atlanta over Interstate Highway 85 to Montgomery), thence over U. S. Highway 80 to Fort Worth, and return over the same route.





Intermediate and off-route points: Montgomery and Selma, Ala., Dallas, Tex., those within 15 miles of Dallas, and Those within 15 miles of Fort Worth.

(2) Between Birmingham, Ala., and Fort Worth, Tex.:

From Birmingham over U. S. Highway 11 to junction U. S. Highway 80 (near Cuba, Ala.), thence over U. S. Highway 80 to Fort Worth, and return over the same route.

Intermediate point: Tuscaloosa, Ala.

(3) Between Montgomery, Ala., and Houston, Tex.:

From Montgomery over U. S. Highway 31 to Mobile, Ala. (also from Montgomery over Interstate Highway 65 to Mobile), thence over U. S. Highway 90 to junction U. S. Highway 190, thence over U. S. Highway 190 via Baton Rouge to Kinder, La., thence over U. S. Highway 165 to the junction of U. S. Highway 90 at Iowa, La., thence over U. S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Mobile, Ala., Beaumont, Port Arthur, Smith's Bluff, Texas City, and those within 15 miles of Houston.

(4) Between the junction of U. S. Highways 190 and 71 west of Baton Rouge, La., and Shreveport, La., over U. S. Highway 71, serving no intermediate points, for purpose of joinder only.

(5) Between Meridian, Miss., and the junction of U. S. Highways 11 and 190 near Slidell, La., over U. S. Highway 11, serving no intermediate points, for purpose of joinder only.

No. MC-94201 (Sub-No. 56), filed July 12, 1965, as amended.

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading):

(1) Between Birmingham, Ala., and Houston, Tex.:

(a) From Birmingham over U.S. Highway 31 (also over Interstate Highway 65) to Atmore, Ala., thence over Alabama Highway 21 to the Alabama-Florida State line, thence over Florida Highway 97 to junction U.S. Highway 29, thence over U.S. Highway 29 to Pensacola, Fla., thence over U.S. Highway 90 to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstate Highway 10) to Houston and return over the same route, serving the intermediate points of Pensacola, Fla., Mobile, Ala., Grand Isle, Lockport and Golden Meadow, La., Pascagoula and Moss Point, Miss., New Orleans, Baton Rouge and Lake Charles, La., and Orange and Beaumont, Tex., and the off-route points of Port Arthur, Baytown and Texas City, Tex., and those off-route points within a 15 mile radius of Birmingham and Mobile, Ala., Pensacola, Fla., New Orleans, Baton Rouge and Lake Charles, La., and Port Arthur, Beaumont and Houston, Tex.;

(b) From Birmingham over U.S. Highway 11 (also over Interstate Highway 59) to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Meridian, Laurel and Hattiesburg, Miss., and those off-route points within a 15 mile

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radius of Birmingham, Ala., New Orleans, Baton Rouge and Lake Charles, La., Port Arthur, Beaumont, and Houston, Tex., and Hattiesburg and Meridian, Miss.

(2) Between Brewton, Ala., and Pensacola, Fla.:

Over U.S. Highway 29, serving no intermediate points, as an alternate route for operating convenience only.

(3) Between Birmingham, Ala., and Mobile, Ala.:

From Birmingham over U.S. Highway 11 to Bucksville, Ala., thence over Alabama Highway 5 to Thomasville, Ala., thence over U.S. Highway 43 to Mobile and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(4) Between Poplarville, Miss., and Baton Rouge, La.:

From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La., thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(5) Between Montgomery, Ala., and junction U.S. Highways 11, 80, and Interstate Highway 59:

Over U.S. Highway 80, serving all intermediate points.

(6) Between Birmingham, Ala., and Fort Worth, Tex.:

(a) From Birmingham over U.S. Highway 11 (also over Interstate Highway 20) to Meridian, Miss., thence over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth and return over the same route, serving the intermediate points of Meridian, Jackson, and Vicksburg, Miss., Monroe, Ruston and Shreveport, La., and Marshall, Gladewater, Longview and Dallas, Tex., and those off-route points within a 15 mile radius of Birmingham, Ala., Fort Worth, Tex., and Meridian, Jackson and Vicksburg, Miss.:

(b) From Birmingham over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, Tex.-Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth and return over the same route, serving the intermediate points of Columbus, Greenwood and Greenville, Miss., El Dorado and Crossett, Ark., Texarkana, Tex.-Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark., and those off-route points within a 15 mile radius of Birmingham, Ala., Dallas and Fort Worth, Tex., Texarkana, Tex.-Ark., Columbus, Greenwood and Greenville, Miss.

(7) Between Birmingham, Ala., and Topeka, Kans.:

From Birmingham over U.S. Highway 78 to Memphis, Tenn.; thence over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo.; thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka and return over the same route, serving the intermediate points of Memphis, Tenn., Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo., and Kansas City, Mo.-Kans.; and those off-route points within a 15 mile radius of Birmingham, Ala., and Kansas City, Mo.-Kans., and Springfield, Mo.

(8) Between Memphis, Tenn., and Little Rock, Ark.:

From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving off-route points within a 15 mile radius of Little Rock, Ark.





(9) Between West Memphis, Ark., and Little Rock, Ark.:

From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., serving off-route points within a 15 mile radius of Little Rock, Ark.

(10) Between Little Rock, Ark., and Greenville, Miss.:

From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.:

Over U.S. Highway 75 (also over Interstate Highway 45), serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.:

Over Interstate Highway 30 (also over U.S. Highway 67), serving no intermediate points, as an alternate route for operating convenience only.

RESTRICTIONS:

(a) Restricted to service on traffic moving from, to, or through Birmingham, Ala., Mobile, Ala., Pensacola, Fla., or Memphis, Tenn.

(b) Service at New Orleans, La., restricted to traffic originating at or destined to points in Tennessee and points in Alabama on and north of U.S. Highway 78.

(c) Restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not as to traffic moving through Memphis, Tenn., and its commercial zone) on the one hand, and points west of the Mississippi River, on the other hand.

No. MC-106401 (Sub-No. 18), filed March 23, 1965.

JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX.

General commodities (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment):

(1) Between Atlanta, Ga., and Fort Worth, Tex.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same route.

Intermediate and off-route points: Jackson, Miss., Monroe and Shreveport, La., Dallas, Tex., and points within 10 miles of Dallas and those within 10 miles of Fort Worth.

RESTRICTION: Restricted to traffic moving from, to, or through Atlanta, Ga.

(2) Between New Orleans, La., and Houston, Tex.:

From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route.

Intermediate and off-route points: Baton Rouge, La., Orange, Beaumont, and Texas City, Tex., and those within 10 miles of Houston.

RESTRICTION: Restricted to traffic moving from, to, or through Gulfport, Miss., (no local service between New Orleans and points on the above route).

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(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala., over U.S. Highway 80 for operating convenience only.

(4) Between Shreveport, La., and the junction of U.S. Highways 71 and 190 near Baton Rouge, La., over U.S. Highway 71 for operating convenience only.

No. MC-111231 (Sub-No. 67), filed June 14, 1965, as amended.

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA

General commodities including classes A and B explosives (but excepting commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment):

(1) Between Atlanta, Ga., and Texarkana, Ark.:

From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 82, thence over U.S. Highway 82 to Texarkana, and return over the same route.

Intermediate points: Birmingham, Ala., Greenville, Miss., and those on U.S. Highway 82 in Arkansas.

(2) Between Texarkana, Ark., and Sherman, Tex.:

From Texarkana over U.S. Highway 82 to Sherman, and return over the same route.

All intermediate points.

(3) Between Birmingham, Ala., and Memphis, Tenn.:

From Birmingham over U.S. Highway 78 to Memphis, and return over the same route.

No intermediate points.

(4) Between Texarkana, Ark., and Dallas, Tex.:

From Texarkana over U.S. Highway 67 to Dallas, and return over the same route.

All intermediate points.

RESTRICTION: Service is restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone (but not on traffic moving through Memphis and its commercial zone), on the one hand, and, on the other, points east of the Mississippi River.

## APPENDIX B

### *Protestants*[1]

1. Holloway Motor Express, Inc.
2. Consolidated Freightways Corp. of Delaware
3. Illinois-California Express, Inc.
4. Southwestern Transportation Company
5. Alamo Express, Inc.
6. Central Freight Lines, Inc.
7. Red Arrow Freight Lines, Inc.
8. Eagle Motor Lines, Inc.
9. T.I.M.E. Freight, Inc.
10. Arkansas-Best Freight System, Inc.
11. Watson-Wilson Transportation System, Inc.
12. Trans-Cold Express, Inc.

[1]By orders of the Commission, the names of protestants numbered 9, 11, 25, 34, and 39 have been changed.





13. Missouri Pacific Railroad Company
    The Texas & Pacific Railway Company
    Missouri Pacific Truck Lines, Inc.
    The Texas & Pacific Motor Transport Co.
14. Red Line Transfer & Storage Company, Inc.
15. A.&H. Truck Line, Inc.
16. Viking Freight Company
17. Gordons Transports, Inc.
18. Mercury Motors, Incorporated
19. Mercury Motor Express, Inc.
20. Carolina Freight Carriers Corporation
21. Akers Motor Lines, Inc.
22. M. R. & R. Trucking Company
23. Mercury Freight Lines, Inc.
24. Howard Hall Company, Inc.
25. West Brothers, Inc.
26. Deaton, Inc.
27. Floyd & Beasley Transfer Company, Inc.
28. Baggett Transportation Company
29. Georgia-Florida-Alabama Transportation Co., Inc.
30. Pilot Freight Carriers, Inc.
31. The Mason and Dixon Lines, Incorporated
32. Georgia Highway Express, Inc.
33. Campbell Sixty-Six Express, Inc.
34. Jack Cole Company, Dixie Highway Express, Inc.
35. Brown Transport Corp
36. East Texas Motor Freight Lines, Inc.
37. Transcon Lines
38. Roadway Express, Inc.
39. Herrin Transportation Company
40. ET&WNC Transportation Company
41. United Motor Freight Terminal, Inc.
42. Red Ball Motor Freight, Inc.
43. Ryder Truck Lines, Inc.
44. Braswell Motor Freight Lines, Inc.

## APPENDIX C

### *Protestants' replies*

Replies were filed separately by Pilot Freight Carriers, Inc., to the exceptions of applicant in No. MC-94201 (Sub-No. 56); separately by Ryder Truck Lines, Inc., to the exceptions of applicant; jointly by Mercury Freight Lines, Inc.; and East Texas Motor Freight Lines, Inc., to the exceptions of applicants and interveners; jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc. (by order of the Commission entered January 14, 1969, the name of this carrier was changed from T.I.M.E. Freight, Inc.), Transcon Lines and Roadway Express, Inc. of Mississippi (formerly West Brothers, Inc., modified by order of the Commission, entered March 18, 1970), to the exceptions of applicant in No. MC-106401 (Sub-No. 18); jointly by

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Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Consolidated Freightways, Inc., Georgia-Florida-Alabama Transportation Co., Inc., Gordons Transports, Inc., Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Yellow Freight System, Inc., to the exceptions of applicants in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67); jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Transcon Lines, Holloway Motor Express, Inc., T.I.M.E.-DC, Inc., Consolidated Freightways Corp. of Delaware, Akers Motor Lines, Inc., Yellow Freight System, Inc., and Braswell Motor Freight Lines, Inc. to the exceptions of applicant in No. MC-94201 (Sub-No. 56), embracing a renewed motion to strike appendixes A and B to exhibit 1985; jointly by Roadway Express, Inc., Roadway Express, Inc., of Mississippi, Campbell Sixty-Six Express, Inc., Transcon Lines, Gordons Transports, Inc., Braswell Motor Freight Lines, Inc., Akers Motor Lines, Inc., Georgia-Florida-Alabama Transportation Co., Inc., and T.I.M.E.-DC, Inc., to the exceptions of applicant in No. MC-2229 (Sub-No. 132); separately by Deaton, Inc., to the exceptions of applicants and interveners; separately by Jack Cole-Dixie Highway Company (by order of the Commission, entered October 31, 1968, the names of merged protestants Jack Cole Company and Dixie Highway Express, Inc., were changed to Jack Cole-Dixie Highway Company) to the exceptions of applicants; jointly by Alamo Express, Inc., Central Freight Lines, Inc., and Red Arrow Freight Lines, Inc., to the exceptions of applicants in Nos. MC-11207 (Sub-No. 233), MC-76177 (Sub-No. 304), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), jointly by Akers Motor Lines, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Roadway Express, Inc., T.I.M.E.-DC, Inc., Transcon Lines, and Roadway Express, Inc., of Mississippi to the exceptions of intervening shippers; and separately (late tendered) by ET&WNC Transportation Company to the exceptions of applicants in Nos. MC-76177 (Sub-No. 304) and MC-94201 (Sub-No. 56).

## APPENDIX D

### *Pleadings*

In its exceptions, Herrin contends that the examiners erred in considering all applications on an erroneous concept that all must be granted or all denied and in finding that a grant of the Herrin application would result in a realignment of the traffic patterns and competitive relationships of existing carriers. Herrin submits that it does not seek to extend its operations beyond its present territory but seeks only to serve seven specific points which are actually intermediate under Herrin's presently authorized operations. Inasmuch as Herrin can now provide service to and from Atlanta, assertedly a grant of authority to and from this point would merely allow it to use all feasible routes for the operations. It believes that the examiners erred in concluding that the transit studies and related testimony, as a whole, do not warrant the conclusion that the existing service is inadequate to meet the real needs of the shipping public in the territory involved in the Herrin application. Herrin excepts to the findings and conclusions of the examiners that it failed to prove that the public convenience and necessity require the grant of its application, and it submits that in considering the criteria for selection of applicants it is a logical choice.

Red Ball contends that the examiners erred in concluding that the 933 public witnesses failed to establish a need for additional carrier service and that a grant of its





application would have an adverse affect on existing carrier service. Assertedly, the 130 public witnesses presented by Red Ball, the additional 24 witnesses called by other parties but testifying in support of Red Ball, and the additional 19 witnesses who testified in support of all applications clearly demonstrate a need for this applicant's proposed service. It is contended that the inequity of the examiners' handling of this proceeding is demonstrated by their failure to even discuss that portion of Red Ball's proposal which was unopposed. Applicant submits that protestant East Texas has filed an application in MC-41432 (Sub-No. 103) seeking authority substantially indentical to that sought by Red Ball. Assertedly, this demonstrates that this protestant has ceased to believe that there is no need for additional authority in the territory involved herein. Red Ball further contends that the examiners erred in concluding that all of the applications must be treated together and in not giving complete and fair treatment to the individual applications. It submits that neither the carriers opposing its application nor the applicants in this proceeding can provide the extensive single-line service proposed by Red Ball between those points presently served by it in Mississippi, Louisiana, Arkansas, Texas, New Mexico, Colorado, and Kansas City, Kans.-Kansas City, Mo., on the one hand, and, on the other, Atlanta, Birmingham, and Greenville. And, assertedly, it is the one applicant in this proceeding that can and will solve the problem of bringing to the smaller cities, towns, and communities adequate and proper transportation service to and from major points of supply and distribution such as Atlanta and Birmingham. Red Ball is willing to have "Performance Report" conditions similar to those imposed in *West Brothers, Inc., Extension—Baton Rouge, La.*, 106 M.C.C. 792 (1968), as modified in 108 M.C.C. 485 (1969), imposed on a grant of authority to it. Finally, it asserts that of all the applicants it is best suited, equipped, and establish, and can, at less cost, perform the service between the points it proposes to serve.

In its conditional exceptions, Deaton submits that if this record discloses a public need for additional service between Atlanta and Birmingham, on the one hand, and, on the other, Dallas and Houston, it believes that a grant of its application would be a necessary corollary to the granting of one or more of the other applications. The filing of its application is described as an effort to keep pace with fundamental realignment of existing motor carrier operational patterns in the Southwest which would result from the granting of any or all of the eight applications it opposes.

On exceptions, Strickland contends that the examiners erred (1) in recommending a denial of the Strickland application, (2) in failing to evaluate the merits of Strickland's application separate and apart from consideration of the proof offered by other applicants, (3) in equating growth in existing carriers with capability to adequately meet the growing transportation requirements of supporting witnesses; (4) in finding that where complaints of service failures had been made to existing carriers remedial action has been taken, (5) in finding that the evidence does not warrant the conclusion that the quality of service proposed by applicants would be sufficiently superior to that of existing carrier services to support a grant of the operations proposed, (6) in placing undue emphasis throughout their report on the fact that various applicants to the consolidated proceedings were also protestants to other cases instead of considering established criteria for proving public convenience and necessity in each instance, especially with respect to the application made by Strickland, and (7) in finding that the granting of the Strickland application would result in a material adverse affect on existing carrier services, and could put Red Line out of business.

Baggett, in its conditional exceptions, indicates that initially it was a "defensive applicant" and was willing to withdraw its application if all other applicants agreed to

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do the same. When it became clear that the other applicants would not withdraw their applications, Baggett indicates that it became a "serious applicant." Baggett contends that the 40 public witnesses who supported its application proved a definite need for direct, single-line service as related to their respective businesses. It believes that a grant of its application would be a necessary corollary to a grant of any of the other applications and it indicates that exceptions were filed to avoid a situation in which its application would stand finally denied while one or more of the other consolidated applications are pending final decision.

Bowman contends on exceptions that the examiners erred (1) in considering all 10 applications collectively, and neglecting and failing to relate the testimony to the Bowman proposal or to give effect to the multiple complaints directed toward existing carriers; (2) in considering and treating the testimony only in relation to commodities shipped to the substantial exclusion of territories and points involved; (3) in failing to consider the divisible aspects of the Bowman application; (4) in failing to recommend approval of the Bowman proposal to serve 10 named Mississippi points, Topeka and Kansas City, Kans., and Kansas City, Springfield, and Carthage, Mo.; (5) in failing to recommend approval of all aspects of the Bowman application; and (6) in arriving at ultimate conclusions and basing their recommendation on broad generalities without specific findings as to the basic facts of record. With respect to the divisibility of its proposal, Bowman contends that only three general-commodity carriers and one specialized carrier have any interest in the proposal to serve the Kansas-Missouri area, and only seven carriers are interested in the Mississippi portion of its proposal. It asserts that the strongest case presented by any applicant was of a need for additional motor carrier service between the authorized Bowman territory, on the one hand, and, on the other, (1) the 10 named Mississippi points, and (2) Topeka and Kansas City, Kans., and Kansas City, Springfield and Carthage, Mo. It is pointed out that more public witness (137) testified in support of the Mississippi portion of the Bowman proposal than appeared for all aspects of 7 of the 10 applicants and more than all witnesses combined of 3 of the applicants. Bowman believes that if the application had been filed simply for authority between its territory in the South and the aforementioned Missouri and Kansas points, it would have received a grant of authority. Assertedly, the 82 witnesses which supported this portion of the application have experienced every conceivable type of difficulty with the existing motor carrier service. Bowman submits that only four carriers hold general-commodity authority between the involved Kansas-Missouri area and any portion of the Southeast, and only three of these carriers, viz, Gordons, Watson-Wilson, and T.I.M.E., oppose this portion of Bowman's application. Furthermore, it is contended that these three carriers, while they hold extensive authority in this area, collectively serve only a limited number of points in Alabama, Tennessee, Georgia, and South Carolina. Bowman submits that even if these carriers served every one of their authorized points, there would still be no service, (1) from the entire State of Florida; (2) from points in Georgia south of U.S. Highway 80; (3) from points in South Carolina north of Greenville, Columbia, and Charleston; and (4) from the entire States of North Carolina and Virginia.

On exceptions, Johnson contends that the examiners erred (1) in generally merging throughout their recommended report their consideration, findings, and conclusions respecting the evidence relating to the Johnson application and the other consolidated applications and thereby failing to evaluate and make adequate findings and conclusions relating to the Johnson application as a separate and independent matter; (2) in finding, on the basis of their erroneous treatment of the applications as a group,





that there is no public need for the service proposed by the Johnson application because existing service is adequate, and (3) in concluding, on the basis of their erroneous treatment of the application as a group, that the benefits of the service proposed by the Johnson application would be outweighed by the material adverse affect that a grant of the Johnson application may have upon existing carrier services. Johnson submits that in restricting service to the transportation of traffic moving from, to, or through Atlanta and Gulfport, Miss., it proposes only an "overhead" operation between present system points, on the one hand, and, on the other, points on the proposed service routes. The proposed "overhead" operation assertedly would provide needed single-line service to and from designated major points in Texas, Louisiana, and Mississippi for traffic originating at or destined to points on Johnson's present system in the States along the Atlantic seaboard and in the Gulf of Mexico territory, without, at the same time, overextending its operations to a multitude of smaller points which can be served adequately in cooperation with local carriers. Johnson submits that it was the first applicant to propose an "overhead", single-line service between these two areas. It is submitted that the Deaton, Baggett, and Floyd & Beasley proposals to serve the same southwestern points do not involve an "overhead" service between the eastern seaboard and the Southwest and these applications were filed as defensive measures. The Johnson application assertedly presents issues quite different from those involved in the applications filed by Herrin, Red Ball, Jones, and Strickland since these other applicants operate in the Southwest and seek to extend their authorities only to the gateways of Birmingham and Atlanta. While Bowman's application involves similar issues, Johnson indicates that this carrier does not serve points in New England and western Pennsylvania which Johnson does serve. Bowman, unlike Johnson, does, however, serve the gateways of Memphis, Tenn., and Birmingham. It is submitted that Bowman's proposal extends much further territorially than that of Johnson. Johnson indicates that only Roadway and Ryder offer single-line service between points on the eastern seaboard, on the one hand, and, on the other, points Johnson proposes to serve.[1] However, it is contended that these carriers are highly selective in the traffic they will handle and they are not able to serve all of the points Johnson presently serves. Further, Johnson contends that in view of the fact that after the commencement of these proceedings Roadway was authorized in another proceeding to acquire substantially the same rights which it is seeking herein, regardless of any possible diversion from the carriers protesting the Roadway application herein, it would be a miscarriage of justice for the Commission to deny Johnson's application because of its possible effect on Roadway. Although several east coast carriers (Pilot, Mason and Dixon, ET&WNC, Mercury Motors, and Carolina) participated in this proceeding they did not oppose Johnson's application. Additionally, it is pointed out that such major east/south carriers as Associated Transport, Inc., Branch Motor Express, Inc., Hennis Freight Lines, McLean Trucking Company, and R.C. Motor Lines failed to participate herein. Johnson contends that inasmuch as an important segment of the joint-line system did not protest the Johnson application and neither evidenced the service they have available nor its adequacy or the impact upon them of a grant of authority, there is no substantial evidence in the record to support the examiners' findings that there is available existing joint-line service adequate to meet the needs of the shippers.

On exceptions, Jones contends that the examiners erred in failing to find that the public convenience and necessity requires its proposed operation entirely or in part. Specifically, it contends that while the examiners found that a need is shown for additional service relating to less-than-truckload (LTL) shipments of commodities requiring refrigeration, including meats, candies, and pharmaceuticals, they erred in

[1] The operations performed under the McLean-Herrin merger are not included in the statement.

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failing to award the grant of such authority to this applicant. With respect to refrigerated service, Jones points out that it operates 111 trailers equipped with mechanical refrigeration, which is more than all of the other applicants collectively operate. It handles combination loads of perishable and nonperishable commodities in the same trailer and it presently provides LTL refrigerated service to a number of shippers. Assertedly, if the volume of refrigerated traffic shippers have shown to be moving is considered on an annual basis shipments to Atlanta would exceed 37 million pounds a year and approximately 4 million pounds would move annually to Birmingham. Annually, 10.5 million pounds moves outbound from Atlanta to points Jones is authorized to serve. At least one of the supporting shippers indicates that it cannot ship commodities requiring refrigeration from Atlanta to points in Arkansas and Mississippi during the summer months because refrigerated service is not available. Jones submits that it is the only applicant herein which presently provides LTL refrigerated service. With respect to existing service, Jones submits that the examiners erred in finding that the complaints were minimal and that shippers have recourse where carriers refuse to render service. Jones indicates that it is not interested in traffic moving between Atlanta and Birmingham and it is willing to have a grant of its application restricted accordingly. Also it expresses a willingness to accept a restriction against the transportation of traffic between Atlanta and Dallas which does not require temperature controlled trailers. Finally, Jones contends that if the involved application were not heard on a consolidated record, it would have received a grant of authority.

The 41 intervening shippers which support the Johnson application, in their jointly filed exceptions, contend that the examiners erred in recommending a more cooperative effort between carriers and shippers as a substitute for competition. Assertedly, the examiners should have found that both the public convenience and necessity and the national transportation policy encourages competition among carriers as a means for improving inadequate service. Further, interveners maintain that the examiner erred (1) in concluding that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier; (2) in determining public convenience and necessity by placing considerations of possible detriment to existing carriers through increased competition ahead of benefit to the public; (3) in concluding that "the primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public"; and (4) by sidestepping the consideration of "monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public ***." Interveners submit that suppression of competition runs counter to both the letter and spirit of the Federal antitrust laws; that only where the intent of Congress is clear and manifest has subsequently enacted regulatory legislation exempted specific practices from the operation of the antitrust laws; and that absent such a showing, the antitrust laws are applicable to a situation where, as here, through the denial of additional service, a monopoly is assured to those carriers already in the field in a particular area. Assertedly, the Commission should reverse the examiners's decision and grant the application of Johnson. Because of the complexity of this proceeding and its importance in terms of public interest, the intervening shippers request that oral argument before the Commission be granted.





Campbell and Gordons, protestants, in their jointly filed "conditional"[1] exceptions to the report but not the order of the examiners, contend that the examiners erred (1) in failing to find that the proposal of Bowman is administratively undesirable because of confusing restrictive amendments; (2) in failing to find that Bowman's proposed joinder of present irregular and proposed regular routes to render scheduled LTL service is contrary to Commission policy, and that a grant of this application would result in Bowman being authorized to serve between the same points over regular and irregular routes; (3) in failing to find that the proposed joinder of irregular and regular routes by Floyd & Beasley, Baggett and Johnson is contrary to Commission policy, and (4) in failing to find that the applications of Red Ball, Baggett, and Jones present joinder problems.

In reply to the exceptions of Bowman, protestant Pilot contends that this applicant now will take anything it can get in the way of a grant. Its proposal to serve named Mississippi, Kansas and Missouri points assertedly is merely an attempt to gain the benefits of serving key traffic points without being burdened with having to serve rural and undeveloped points. Pilot submits that the examiners correctly found that public convenience and necessity do not require the operation for which authority is sought.

In reply to the exceptions of applicants, protestant Ryder contends that Johnson's "overhead" service between large points only is somewhat of a distinction to the degree that Johnson is the most selective carrier and has the proposal least responsive to the alleged transportation needs of the areas involved; that supporting shippers express a need for service between numerous small points; and that in light of Johnson's service to New Orleans, this carrier is incapable of rendering reasonable service even to large points. Ryder maintains that its service, in terms of transit times, is vastly superior to Johnson's between points served by both carriers. Even if the Johnson application were the only one to be granted it is maintained that this carrier would have the opportunity to effect all of the potential diversion. With respect to Red Ball, Ryder contends that this carrier's argument that no single protestant can serve all of the points served by it ignores the fact that there are available in the area involved numerous single-line services as well as hundreds of joint-line services. Assertedly Bowman, after admitting that its case is lost, seeks a "consolation prize", viz. authority to serve specified points in Mississippi, Missouri, and Kansas. While this applicant maintains that Ryder serves only the Mississippi points of Jackson, Meridian, Laurel, and Hattiesburg, Ryder indicates that, as pointed out by the record, it serves points in Mississippi, in addition to those described above. It is submitted that the examiners wisely, properly, and intelligently resolved the few basic issues. Protestant believes that a grant of any of the applications would either cause the involved traffic to move slower because of the dilution of available freight to the carriers involved or would cause no change at all.

Mercury and East Texas, in their joint reply to the exceptions of applicants and of intervening shippers, contend that while the record shows instances of good and bad service by both applicants and protestants, as a whole, the record demonstrates that the examiners correctly concluded that the existing service is reasonably adequate and satisfactory on the whole and that the *status quo* should be preserved by denial of the applications. Assertedly, the record also shows that none of the applicants can perform on a consistent basis a service any more expeditious or dependable than that

[1] Protestants request that if exceptions are filed by the applicants treated in their pleading, the "conditional" exceptions be considered by the Commission. On the other hand, if any of these applicants fails to file exceptions, the pleading may be disregarded by the Commission. Campbell does not participate in this pleading to the extent that it is directed to the application of Bowman since the former withdrew its opposition to the latter's proposal.

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which is presently available normally to the shipping and receiving public by existing carriers. With respect to the exceptions of Jones, protestants submit that a grant of authority limited to the transportation of less-than-truckload (LTL) shipments requiring refrigeration could not be economically performed by Jones. Strickland, it is submitted, fails to make any specific record citations to support its claims of error. Herrin assertedly has failed to show any error in the recommended denial of its application and it is submitted that this carrier has now been authorized to extend its system operations from Macon, Ga., into Atlanta by purchase. To substantiate its contention that it would be adversely affected by a grant to Red Ball, East Texas submits that the record shows that in a 1-year period it transported 20.5 million pounds from Atlanta to Dallas, Tex., and 19.6 million pounds in the reverse direction. East Texas indicates that it has over 270 million pounds of annual traffic at stake. Assertedly, Johnson's service record demonstrates that it could not meet the proposed service standards. Protestants point out that although intervening shippers' exceptions make statements of fact, there are no citations to the record and inasmuch as the pleading does not, therefore, comply with rule 96(a) of the Commission's General Rules of Practice it should be stricken or rejected, or given little or no consideration. Additionally, protestants assert that the request of Johnson and the intervening shippers in support of the application of Johnson for oral argument should be denied inasmuch as the issues are not complicated and relate principally to a question of fact.

Johnson, in reply to the contentions of Campbell and Gordons that this application should be denied because it involves the bridging of regular routes with an irregular route, as well as the joinder of regular and irregular routes, submits that its proposed regular routes join its present system at New Orleans, La., and Atlanta, which points are located on its present regular-route system; that any bridging operation over highways in irregular-route territory, if it takes place at all, will be confined to truckload traffic; that it does not propose to directly join proposed regular routes with existing irregular-route authority; and that although it does tack regular with irregular-route authority at common service points, it preserves the character of the respective authorized services. With respect to the conditional exceptions of Deaton and Baggett, Johnson submits that the former did not show the impact upon it of a grant of only the Johnson application and the latter did not prove that a grant of the Johnson application also warrants a grant of the Baggett application. Replying to the exceptions of Herrin, Red Ball, and Strickland, Johnson asserts that its proposal to serve "key points" should not be regarded as "slighting" the small community. Instead, Johnson submits that it is a practical solution to the maintenance of reasonably adequate service in the transportation of small shipments at large cities as well as to the medium and small communities in the Southwest. Single-line service will be provided to the large communities proposed to be served and Johnson will provide the long-haul portion of joint-line service for the shippers and receivers located at the medium and small communities in the Southwest. It indicates that it has obtained from proposed connecting carriers an indication of their willingness to cooperate in the plan.

In their joint reply to the exceptions filed on behalf of Johnson, certain protestants[1] contend that Johnson's proposal, as tested by Johnson's performance, is not realistic. They contend that Johnson's testimony, that its entire operation was to be converted from a relay operation to a sleeper-type of operation is of no value since Johnson failed to introduce into evidence any indication of the progress under the proposed change in its operation, if in fact, such change actually took, or will take, place.

With respect to Johnson's contention that it proposes an "overhead" service between the eastern seaboard and the Southwest, protestants submit that a great many

[1] Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and Wen.





of this application's supporting shippers testified about Texas, Louisiana, and Mississippi, and about nowhere else. Of the remainder, assertedly the vast majority involved service between Atlanta and Texas points. Protestants maintain that the traffic moving between points sought to be served by Johnson is open to diversion if the Johnson application alone is granted. Furthermore, inasmuch as the Texas area is primarily a consuming area and not a manufacturing area, there is an imbalance of traffic and a grant of the Johnson application would further dilute the east-bound traffic. With respect to Johnson's request for oral argument, protestants submit that the proceeding does not present a very complex problem and that the request, therefore, should be denied. It is requested that the examiners report and recommended order be adopted.

Certain protestants,[1] in a joint reply to the exceptions of applicants Deaton, Baggett, Jones, Strickland, and Herrin submit that the exceptions of Deaton and Baggett do not comply with the Commission's General Rules of Practice and do not merit serious consideration, and that not only did Jones, Strickland, and Herrin fail to submit evidence demonstrating that they are rendering the type of service proposed between comparable points but assertedly the record demonstrates their inability to perform the proposed services. Protestants concede that the record demonstrates that there is a need for LTL service on commodities requiring refrigeration. They assert, however, that a grant to Jones or any other applicant to transport such commodities is not warranted by the record. It is submitted that Jones made no proposal to handle this type of traffic exclusively and its only proposal was to transport general commodities and it was dependent upon the establishment of substantial terminals at Birmingham and Atlanta. Assertedly, an operation limited to the handling of commodities requiring refrigeration would not justify the opening of such terminals. Protestants maintain that it would be totally unrealistic to assume that any carrier would successfully operate if such a grant were restricted to the transportation of LTL shipments and even if such authority were not restricted to the handling of LTL shipments it would be unrealistic to assume that Jones, or any other general commodity carrier, could operate over these long routes[2] transporting only refrigerated commodities. With respect to supporting shipper evidence, protestants submit that there are numerous instances wherein the public witnesses either had not investigated the availability of existing services or had failed to use that service, including the service of the supported applicant; that the criticisms of existing service relate to applicants as well as protestants; that some of the complaints about protestants' services which applicants cite in their exceptions leave erroneous implications; that the transit time studies support criticisms of applicants', as well as protestants' services; and that even if, assuming *arguendo*, the service specified shippers were receiving at the time of the hearing was unsatisfactory, additional single-line services[3] have been instituted since the close of the hearing. Assertedly, the effect of a grant of any of these applications

[1] Akers, Braswell, Campbell, Consolidated, Georgia-Florida-Alabama, Gordons, Roadway Express, Inc., of Mississippi, Roadway Express, Inc., T.I.M.E., Transcon, and Yellow Freight.

[2] To illustrate, protestants submit that on its route from Atlanta to Greenville (428 miles), Jones proposes service to only one intermediate point, Birmingham.

[3] Protestants submit that such additional single-line services include four between Atlanta and Dallas, Tex., three between Atlanta and Houston, Tex., five between Atlanta and Baton Rouge, La., four between Atlanta and Jackson, Miss., four between Atlanta and New Orleans, La., two between Atlanta and Kansas City, two between Atlanta and Monroe, La., and two between Atlanta and Little Rock, Ark.

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will not be limited to service to the major points proposed to be served by applicants. It is pointed out that the ability of one of the protestants to perform a reasonably adequate service to innumerable smaller points in a specified State is directly dependent upon the economic stability of its service from and to the larger terminal points applicants propose to duplicate. No applicant proposes to render a local distribution service out of any proposed service point. Protestants submit that this Commission should condemn the practice of selectivity advocated by applicants inasmuch as it only increases the problems confronting distribution carriers. In light of the fact that Herrin can now perform much of the service it proposes to perform herein, protestants maintain that there is no need for a grant of this application. They submit also that when considered in the context of the large number of distribution centers and tremendous amount of traffic involved, an extremely small percentage of shippers and receivers within the involved area actually supported these applications.

In their joint reply to the exceptions of Bowman, certain protestants[1] initially request that official notice be taken of 18 specified motor carrier changes in the involved area that have been approved and authorized since the close of the hearings in this proceeding in August 1967. Protestants contend that no new service should be authorized within this area until all of the new services have been tested and found wanting. Assertedly, Bowman has conceded that it has failed to prove that the public convenience and necessity require any new service to the Texas points from the Southeast. And, it attempts to justify a grant of authority to 10 Mississippi points[2] even though it has not presented any operating proposal under which it could be granted authority to serve only the Mississippi points. Protestants submit that since the close of the hearing Campbell has established terminals at Columbus, Greenville, Greenwood, Hattiesburg, Jackson, and Meridian, and it renders direct service to Laurel; that Roadway-West has has established terminals at Greenville, Hattiesburg, Jackson, Laurel, Meridian, and Pascagoula, and it renders direct service to Greenwood and Moss Point; and that Braswell has established terminals at Jackson and Vicksburg and it renders direct service to Meridian. They contend that if assuming, *arguendo*, supporting shippers have shown that there was a need for additional single-line service between the 10 Mississippi points and Atlanta, such need has been more than adequately met by the introduction of the new single-line services that have been instituted since the close of the hearing. Assertedly, Bowman realizes that it has not shown a public need for additional single-line service to Mississippi on this record since it has subsequently filed an application for authority to serve Mississippi points. With respect to Bowman's allegation that there is public need for additional service between specified Missouri and Kansas points and the Southeast, protestants submit that since the close of the hearing two additional single-line carriers, Campbell and Consolidated, have commenced to provide service between Atlanta and Kansas City, and that another new carrier should not be authorized to serve these points until these new services have been tried and found wanting. Bowman assertedly not only failed to establish that it could provide the scheduling proposed, but it established that it was not providing the service it was holding out under its existing authority. Further, it is submitted that Bowman's application proposes the overlapping and intertwining of regular- and irregular-route authority contrary to the policies set forth in *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23; affirmed 80 F. Supp. 110; (S.D. Iowa 1948); affirmed 35 U.S. 875 (1948). If the Bowman application is granted, some protestants assertedly would be adversely affected. It is submitted that

[1] Roadway, West, Transcon, Holloway, T.I.M.E., Consolidated, Akers, Yellow Freight, and Braswell.

[2] Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Pascagoula, and Vicksburg, Miss.





Holloway would not be able to continue service inasmuch as it receives 71 percent of its operating revenue from a shipper which supports Bowman for service to Kansas City and Topeka notwithstanding the admission of the shipper that Holloway's service is satisfactory. Protestants maintain that inasmuch as Bowman did not except to the examiners' finding that Holloway could not survive if Bowman's application were granted it concedes this fact. Finally, they renew their motion to strike appendixes A and B to exhibit 1985.

Certain protestants,[1] in their joint reply to the exceptions of Red Ball, contend that the lack of record references to evidence to substantiate claims of error is, in and of itself, fatal to these claims. Protestants submit that there is much more traffic moving inbound to Texas than moving outbound to the Southeast since the Texas area is primarily a consuming area, and not a manufacturing area. A grant of one or more of these applications, assertedly would dilute the eastbound traffic and could very well result in the inability of existing carriers to continue to provide the type and caliber of service that they are presently providing. Since the close of the hearing, Braswell, Herrin, Mercury, and T.I.M.E. have been authorized to render single-line service between Atlanta and Dallas, Tex.; Braswell, Herrin, and Mercury have been authorized to serve between Atlanta and Houston, Tex.; Mercury, Braswell, Herrin, Campbell, and Roadway-West have been authorized to serve between Atlanta and Baton Rouge, La.; Braswell, Campbell, and Roadway-West have been authorized to serve between Atlanta and Jackson, Miss.; and Braswell, Campbell, Herrin, and Roadway-West have been authorized to serve between Atlanta and New Orleans, La. Protestants maintain that the motor carrier growth has far outstripped any economic growth of this area. With respect to serve at small points in Texas, it is submitted that receivers located at these points will receive better service by having the long-haul carriers transport traffic destined to these points, to major Texas points such as Dallas, Houston, or San Antonio for interchange with a distribution carrier such as Red Ball. Even if Red Ball's application were granted, it is pointed out that this carrier would be required to break bulk at Dallas or Houston on shipments destined to these small Texas points.

Deaton, in its reply to the exceptions of Herrin, Red Ball, Strickland, Baggett, Johnson, Bowman, Jones, and intervening shippers, contends generally that nothing in these exceptions seriously detracts from the correctness of the examiners' decision or supports any result different from that recommended by the examiners. It submits that if any new authority is granted between Atlanta and Birmingham, on the one hand, and, on the other, New Orleans, Memphis, and points in Mississippi, more than $3 million of its annual revenue would be subject to diversion. If only the Johnson application were granted, Deaton indicates that it could be deprived of annual revenues of at least $190,000. A grant of the Red Ball application would assertedly have a greater impact than a grant of the Johnson application. Strickland's proposed single-line service is in direct competition with Deaton's single-line service in the above-described area. Deaton submits that Herrin, notwithstanding its purchase of authority into Atlanta and its subsequent merger into McLean, seeks authority herein for a short service route between Memphis and Atlanta through Birmingham. A grant of authority to render a new single-line service over the Atlanta-Birmingham-Memphis route to Herrin would assertedly subject Deaton to annual revenue losses of approximately $275,000. Furthermore, it is submitted that there is a paucity of support for a new service between Atlanta, Birmingham, and Memphis. With respect

[1] Roadway, West, Campbell, Transcon, Gordons, Braswell, Akers, Georgia-Florida-Alabama, and T.I.M.E.

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to Bowman's plea for a partial grant, Deaton maintains that Bowman's attempt to serve points in Mississippi does not constitute a separate proposal. Instead, it is maintained that service to and from points in Mississippi is proposed only as incidental intermediate point service on its routes. Additionally, Bowman has filed a separate application seeking authority to serve Hattiesburg, Jackson, Laurel, and Meridian, which have a combined population of about 280,000. Under the more recent proposal it does not seek to serve the six other Mississippi points in question which have a combined population of approximately one-half of the four above-described Mississippi points. It is suggested that the question of whether there is a need for service at the involved Mississippi points be resolved in Bowman's more recent application and not herein. Deaton contends that the examiners correctly found that the need for improved and additional service in the transportation of commodities requiring refrigeration is not "sufficient to support a grant of general commodity authority ***." It is submitted that a grant of authority to transport LTL shipments of commodities requiring refrigeration, as indicated in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967), is unacceptable as a matter of law and sound regulatory policy. In conclusion, Deaton maintains that the examiners' findings and conclusion should be affirmed.

In reply to the exceptions of applicants, Cole-Dixie[10] generally contends that all of the applications should be denied; that any grant of new competing authority will jeopardize its ability to continue serving the public between the points it is authorized to serve; that its services are adequate to meet the needs of the shipping public; and that no valid reason exists for an award of competing authority. It is submitted that consolidation of all 10 applications has obtained for the Commission its first opportunity to consider (1) the adequacy of all existing motor carrier services between two of the major economic geographic regions of the United States, and (2) whether there is a need for additional service between those areas. Cole-Dixie submits that the applicants complain about the consolidation only because the inadequacies of their existing services are revealed. Also it it maintained that although existing service is adequate, applicants request new authority that would rearrange the entire route structure and drastically change the competitive situation between the carriers in the Southeast and Southwest. Assertedly, applicants, in a desperate effort to salvage something from this proceeding, argue collectively that in some geographic areas, opposition is less extensive than at other points; that single-line service is required to and from small points; that its proposal consists of a service which the individual applicant considers unique to its operation; and that the impact of a grant would be lessened if specified restrictions or limitations were imposed. Cole-Dixie submits that these arguments are admissions of failure to prove need for the service as proposed. It is concluded that inasmuch as 52 percent of Cole-Dixie's combined revenues are obtained on traffic moving between terminal points at which one or more of the applicants proposes to render a new service, approximately 50 percent of Cole-Dixie's traffic would be subject to diversion. The application of Red Ball poses the greatest threat of diversion to Cole-Dixie inasmuch as the former is Cole-Dixie's largest interchange connection for the subject traffic and is, therefore, in the best position to take the most traffic away. Protestants indicate that they are both losing money and that a loss of traffic, particularly to the western carriers which control so much

[10] By order served October 9, 1968, in No. MC-F-10107, Jack Cole Company and Dixie Highway Express, Inc., were merged and the surviving corporation's name was changed to Jack Cole-Dixie Highway Company. When the context requires, Cole and Dixie will be treated as two separate carriers.





eastbound traffic, will worsen the balance problem within Cole-Dixie's southern network and will cause even further unprofitable operations. It is urged that the recommendation of the examiners be affirmed.

Alamo, Central and Red Arrow, in their joint reply to applicant's exceptions, adopt the replies to the exceptions filed by Mercury and East Texas; Akers and other specified protestants; and Roadway. Protestants submit that the examiners' conclusions and findings should be affirmed.

In their joint reply to the exceptions of intervening shippers, certain protestants[11] list a number of changes in motor carrier service in the area involved to show the "fluidity of the situation and the complete lack of the predetermined rigidity on the part of the Commission which is apparently the basis of the intervenors' position." Protestants submit that they opposed the intervention since the interveners were raising issues which had not been raised on brief and, therefore, had not been submitted to the examiners. In renewing their objection they indicate that they do not, by replying to interveners, waive or forego any contentions heretofore made in their opposing pleadings. With respect to interveners' contention that existing carriers hold a monopoly of the traffic moving between the cities Johnson desires to serve direct, protestants submit that there was no monopoly at the time of the hearing, and since the hearing the quantum of service in the involved area has increased greatly. Furthermore, protestants cite *York Interstate Trucking, Inc., Extension—Muriatic Acid*, 67 M.C.C. 626, 628 (1956), and *Transport, Inc. Extension—Sioux Falls, S. Dak.*, 81 M.C.C. 751 (1959), for the proposition that even assuming that the existing carriers hold a monopoly, the mere existence of a monopoly, standing alone, would not justify the establishment of a new operation without a showing of inadequacy or some inferiority in the service of existing carriers. Protestants maintain that no need for additional service has been shown since interveners generally either do not know of or have not used the service of existing carriers. With respect to the examiners' alleged finding that existing carriers must be accorded an opportunity to remedy deficiencies in service before additional service is authorized protestants submit that the examiners neither made such a finding, nor did they place possible detriment to existing carriers ahead of any public need. Assertedly, the findings and conclusions of the examiners should be affirmed.

Bowman, in reply to the conditional exceptions of protestant Gordons, contends that its proposed restrictions are understandable; that they do not fall within any of the categories proscribed by the Commission in *Fox-Smythe, supra*, and that they would accomplish the result intended by their proposed imposition. It submits that Gordons' contention, that, because some of Bowman's present authority is irregular route, it should not be granted regular-route authority, is without merit. Furthermore, this contention is moot because Bowman, in MC-94204 (Sub-No. 86), seeks to convert its existing irregular-route authority to regular-route authority.[12]

ET&WNC, protestant, in reply to the exceptions of applicants Bowman and Baggett, submits that the latter is not a serious applicant; that the former failed to establish the feasibility of its proposal; that Bowman's contention that portions of its application should be granted demonstrates that Bowman recognizes that it has not met its burden of proof and is wholly without merit inasmuch as the proposal was an integrated service proposal which must be viewed as a whole; and that Bowman, in its exceptions, ignores the material adverse effect which replicant, among other protestants, would experience from the diversion of traffic resulting from a grant of the application.

[11] Akers, Braswell, Campbell, Gordons, Roadway, T.I.M.E., Transcon, and West.

[12] As noted in the report herein, Bowman's conversion application has been granted.

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APPENDIX C

Survey of evidence of supporting shippers

ALABAMA

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] Thompson-Weaver Chemicals, Inc., Mobile, Ala. Industrial agricultural and rubber chemicals, resins, primes and fibreglass cloth | From Mobile to points each month shipper receives about [illegible] traffic consists of about four truckload (TL) shipments and between six and eight less-than-truckload (LTL) shipments averaging [illegible] pounds a shipment | Chicago, Baggett, and West Brothers | Shipper has difficulty in getting Baggett to pickup shipments in New Orleans and in getting West to deliver in Mobile. Since Johnson will not haul to/from New Orleans to Mobile from the East, this carrier is used from New Orleans only to a limited degree. The inefficiency of inadequate service to that area prevented | Herrin. Shipper has not requested Herrin service. Other than that it is using, for New Orleans to Mobile, the transports one half of its TL traffic. Rest has it haul to Mobile in its private equipment |
| [illegible] Gun Chemical Company, Mobile, Ala. Heavy duty industrial and marine cleaning compounds. | From Mobile to Lake Charles, La. and Port Arthur, Galveston, Corpus Christi, and Houston, Tex. Between [illegible] and 5:1:14 shipper moved 6,397 pounds to Lake Charles, 45,438 pounds to Port Arthur, and 19,786 pounds to Houston. It ships monthly to Lake Charles, weekly to Port Arthur, and twice a week to Houston, occasionally it ships to Baton Rouge, La. | Central Intermodal with Pyburn to Lake Charles. Red Ball direct to Port Arthur and Baton Rouge. Both Johnson have used to the points they serve. Mercury interlines with Central to Galveston and Mercury interlines Aidman to Corpus Christi. | Shipper receives transit time complaints on 25 percent of its shipments to Lake Charles. It complains that Mercury has held freight for Houston in its terminal overnight, and that Red Ball is slow in paying claims. While Mercury's service to Houston is generally adequate, shipper believes that Herrin would give better service. | Herrin, Brewer, and Johnson |
| [illegible] Thomas Lumberton, Birmingham, Ala. Dredge pumps, parts, rock crusher parts and allied items. | From Birmingham to Pine Bluff and Lake Village, Ark., Baton Rouge and Monroe, La., Crystal Springs and Greenville, Miss., and Houston, Tex. It has approximately 600 shipments a month with an average weight of 701 pounds moving to the named Arkansas and Mississippi points and to Monroe between 10,001 and 100,000 of nearly 175 shipments were monthly to Baton Rouge. Shipper also has five or six shipments a month to the Houston area, weighing between 5,000 and 10,000 pounds each. Shipper has movements of scrap from Houston to Birmingham, and it has a possible movement of scrap from Baton Rouge to Birmingham. It also states that it has movements to other points in Louisiana and Texas and to points in other states that Brewer and Interstate proposes to serve. Approximately 20,000 pounds a year move to Kansas City and Topeka, Kans. | From Birmingham to Baton Rouge, that originates and terminates with Gordons at New Orleans. In shipments to Houston East Texas is utilized. Campbell is used as originating carrier on shipments to Kansas City and Topeka, west is used to points in Mississippi. Occasionally Mercury handles shipper's traffic from Birmingham to Houston | Shipper requires flat-bed equipment to move its cargo, which weigh between 10,000 and 70,000 pounds, are loader by overhead crane. Also, most of the inbound scrap must be unloaded by overhead crane. It expresses a need for Gordon's proposed extended service to Baton Rouge and Houston. Shipper has occasionally received complaints on shipments to Kansas City and Topeka | Easton, Strickland, and Brewer. Transit time from Birmingham to Baton Rouge is generally 3 days. The service of West to points in Mississippi is described as excellent. Shipper did not know of any single-line service between Birmingham, on the one hand, and on the other, Kansas City and Topeka |
| [illegible] Tennessee Floors, Inc., Anniston, Ala. Clallerware items | From Hendersonville to Houston, Austin, San Antonio, El Paso, Dallas, and Beaumont, Tex. All traffic moves in LTL lots on a daily basis with the average shipment weighing about 2,750 pounds. About six shipments move a day with each weighing between 125 pounds and 8,000 pounds and with the average shipment weighing about 900 pounds. | Baggett originates shipper's traffic. The services of Bell Transfer, Inc., Motor Express and the Interstate Railway have also been used. T.I.M.E. and East Texas handle some of shipper's traffic. | Shipper wants single-line, 2- or 3-day service from Anniston to Texas. It states that there is no single-line service available from Anniston to Houston, Dallas, Beaumont, and Fort Worth. Complaints are received about once a week during the busy season. In the shipments complained of, transit time to Texas was between 5 and 8 days. | Baggett. Shipper did not investigate to determine whether the delay was on the part of the originating delivering carrier. |
| [illegible] Berry Furniture and Flooring Company, Birmingham, Ala. Iron castings. | From Birmingham shipper has between 5,000 and 15,000 pounds moving to points in Texas. The traffic is nearly 15% with the average shipment weighing between 500 and 2,000 pounds. About 10,000 pounds a month moves to Houston. | To Houston shipper uses Lone Star Texas and Harrison | Inauguration of service to Houston would enable shipper's product to meet in the construction of buildings. Desires less protracted one-and-two deliveries at closing weekends and facilities to points in Texas. | Red Ball and Interstate. Shipper has not tested Herrin's service and has found it to be satisfactory. |
| [illegible] Bost Steel Products, Inc., Birmingham, Ala. Agricultural fuel handling equipment and commercial storage equipment. | From Birmingham shipper makes shipments of TL shipments to Houston and to points within 15 miles of Houston. It expected to commence shipping within 3 months of the hearing to Beaumont and Texas City. The shipper has distributors at Houston and Seguin, Tex. It indicate that in summer all of Texas. | Shipments to Houston move in private equipment of a freight forwarder to Houston, private carriage a week once a month. | Shipper wants Herrin's proposed two-and-one-half-day service to points in Texas. Shipper requires flat-bed trailers to handle its TL movements. | Herrin. |
| [illegible] Republic Steel Corporation, Gadsden, Ala. Iron and steel articles. | From Gadsden shipper has traffic moving to numerous Texas, Louisiana, Arkansas, Oklahoma, and Missouri points. During 1963 it shipped 2,000 tons to [illegible] and 175 tons to points in Texas. In the first quarter of 1964, at shipper is 750 pounds to named points to Houston, 5,000 pounds to Missouri, 17,000 pounds to Arkansas, and 9,975 pounds to Texas. All of its traffic was LTL (including TOFC, using the same carload is had 71 shipments, including TOFC, to Arkansas (2,167 tons); Louisiana (1,021 tons); Missouri, (293 tons); Oklahoma, (99 tons); and Texas (273 tons). Most of shipper's traffic moves in TL. | No TL traffic to Texas points. Includes freight and moves originating, interlining with Eagle or Birmingham Superior Express. It is single-line service. Shipper uses motor, irregular-route carriers | Shipper wants single-line service to Easton from Gadsden to Houston. It requires [illegible] and [illegible] shipment with [illegible] | Herrin, Brewer, and Baggett. Shipper is not serving either on, were a no satisfactory points. |
| [illegible] Goodrich Company, Akron, Ohio Synthetic rubber, carbon black, and tires. | Inbound to its Tuscaloosa, Ala., plant shipper moves by rail mostly (between two and five percent moves by rail) synthetic rubber from Port Arthur, Tex., and carbon black from Houston, Tex. Between two and three million pounds move inbound each month. Inbound from Tuscaloosa, shipper moves tires to Houston, Fort Worth, and Dallas, Tex. About one million pounds a month moved to these points. The half of this traffic is handled by truck and the remainder is handled by rail. The former are TL lots weighing between 20,000 and 30,000 pounds. Additionally, shipper has about 15 LTL outbound movements totaling about 25,000 pounds. Shipper also moves about 750,000 pounds of tires a month from Tuscaloosa to Atlanta, Ga. The main amount of tires also moves through Atlanta to points west thereof. About 75 percent of outbound LTL shipments move to the Dallas-Fort Worth area with the remainder moving to Houston. Approximately 50 percent of the TL shipments move to Houston. | Dixie and Alabama Highway Express handle shipper's traffic to Atlanta. The latter also handles traffic which is interlined at its plants. Campbell originates shipper's traffic moving to points in Texas and interlines it at Memphis. Pyburn also originates shipper's traffic and interlines at Memphis. Service includes origination outbound traffic and interlines at Birmingham. Mercury interlines at Birmingham, and delivers shipper's traffic to Houston. Mercury is used on traffic moving into and out of Atlanta. | Shipper does not want the use of any single-line service between Tuscaloosa, on the one hand, and, on the other, Dallas, Fort Worth, and Fort Arthur. It acknowledges that Ryder holds single-line authority from Houston to Tuscaloosa but it does not also to use Ryder because of the service and because this operator no longer has a terminal at Tuscaloosa. Shipper is satisfied with Mercury's service. It has not used Gulf-Roadway through Birmingham outbound. | Support. Shipper does not have any single-line service between Tuscaloosa, on the one hand, and, on the other, Dallas, Fort Worth, and Fort Arthur. It acknowledges that Ryder holds single-line authority from Houston to Tuscaloosa but it does not also to use Ryder because of the service and because this operator no longer has a terminal at Tuscaloosa. Shipper is satisfied with Mercury's service. It has not used Gulf-Roadway through Birmingham outbound. |
| 6. (36) Montgomery, Ala. | See Shipper summary under Georgia heading. | | | |
| 7. (36) Decatur, Ala. | See Shipper under North Carolina heading. | | | |

The number in the parentheses in the witness number utilized by the examiners.





Survey of evidence of supporting shippers - Cont'd.

ALABAMA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 8. (52) Burke-Parsons-Bowlby Corporation, Birmingham, Ala. Metal products. | [illegible] Birmingham to points in Texas, Arkansas, Louisiana, Mississippi, and Oklahoma moves from Bessemer, Ala., weighing a total of [illegible] pounds. Shipper has [illegible] shipments weighing between 500 and 1,000 pounds, [illegible] weighing between 1,000 and 2,000 pounds, [illegible] weighing between 2,000 and 5,000 pounds, [illegible] weighing between 5,000 and 10,000 pounds, [illegible] weighing between 10,000 and 15,000 pounds, and [illegible] weighing over 15,000 pounds. Shipper has [illegible] shipments weighing 1,000 pounds or less, [illegible] weighing between 1,000 and 2,000 pounds, [illegible] weighing between 2,000 and 5,000 pounds, [illegible] weighing between 5,000 and 10,000 pounds, [illegible] weighing between 10,000 and 15,000 pounds, and [illegible] weighing over 15,000 pounds. Shipper also receives inbound traffic from [illegible], Ala., [illegible], Ala., Russellville, Ark., [illegible], and Harrison, Ark. Bentonville, Ark., and Crystal Springs, Miss. The shipments weigh between 100 pounds and 5,000 pounds. Inbound shipments move from Birmingham to, among other points, New Orleans, Franklin, Alexandria, Arcadia, and Baton Rouge, La., Vicksburg, and Clinton, Miss., Ark., Ala., Memphis, Tenn., and Houston, Tex. Shipper has [illegible] shipments weigh an average of between 1,000 and 10,000 pounds each week. | Southern Railway, Frisco, Alabama, Tennessee, Gulf, Mobile & Ohio, Illinois Central, Louisville & Nashville, Atlantic Coast Line, Seaboard Air Line, Central of Georgia, Atlantic, Birmingham Southern, Georgia Southern & Florida, Nashville, Chattanooga & St. Louis, Central, Missouri Pacific, Texas & Pacific, Kansas City Southern, Louisiana & Arkansas, Missouri-Kansas-Texas, Chicago, Rock Island & Pacific, Illinois Central, Gulf, Mobile & Ohio, Chicago & Eastern Illinois, Wabash, Chicago & Northwestern, Chicago, Milwaukee, St. Paul & Pacific, Chicago, Burlington & Quincy

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible]—Con. Agreement carrier. | ...ers. Shipper does have some TL movements. | | scheduled. Also shipper's storage facilities are limited. Shipper feels that it needs the services of an additional carrier to give it flexibility. | |
| [illegible] Glover Paper Mfg. Montgomery, Ala. Paper products. | ...ton Montgomery to points in Texas, including, but not limited to, Houston, Dallas, and Fort Worth, having a minimum parcel [illegible] 2,000 pounds [illegible] 2,000 pounds to Dallas, 2,000 pounds to Fort Worth and 10,000 pounds to other Texas points. All of these shipments were LTL, with the average shipment weighing 750 pounds. | West, Cole, A&A Motor Lines and connections are used. | Shipper wants a direct, single-line service. It receives about one shipment a month to Houston. It does not desire that Houston service from Montgomery to Houston, Dallas, and other Texas points in single-line service. | Support. Shipper did not know of any single-line service from Montgomery to points in Texas. It was not aware that Houston service from Montgomery to Houston, Dallas, and other Texas points in single-line service. |
| 9. (69) Ozinaukee Tube, Division of Calumet and Hecla Consolidated Copper Company, Hamilton, Ohio. Copper, brass, and aluminum tubing. | From Detroit or to Houston, Dallas, Shreveport, and Fort Worth, Tex. Each week 50,000 pounds moves to Houston, 2,000 pounds to Shreveport, and 150,000 pounds collectively to Dallas and Fort Worth. The majority moves in TL weighing approximately 30,000 to 32,000 pounds. Some moves in LTL weighing from 500 to 1,500 pounds each. Shipper planned to expand its Houston facility and supported an increase of 25 percent in its business. About 20 or 25 percent of its movement are rail shipments. About 40 shipments of TL lots move to Houston weekly and between four and six TL shipments move to Dallas weekly. The remainder of the traffic is LTL. | Gardner, Hyder, Baggett, Mercury, and the L & N Railway. Also shipper uses its own units of private equipment occasionally on shipments to Texas. Hyder renders single-line service to Houston and Gardner renders single-line service to Dallas and Fort Worth. | Shipper prefers single-line service. It has experienced difficulty in obtaining equipment from the authorized carriers, including Baggett. The majority of the shipments must be moved in open-top equipment. | Support. |
| 10. (70) Smith-Dobbin, Inc., Division of Lithon Industries, Birmingham, Ala. Rubber chains, gear reducers, sprockets, rubber hose and belting, conveyor idlers, and allied articles. | Outbound from Birmingham to Houston, Beaumont, Texas City, Dallas, Fort Worth, and other Texas points. In April and May of 1966, it shipped 8,000 pounds to Houston, 4000 pounds to Beaumont, 500 pounds to Texas City, and 1,000 pounds to Dallas and Fort Worth, Tex. The figures are not representative because it ships to these areas only to supply shortages at its Houston and Dallas warehouses. The shipments are all "truck" LTL, averaging about eight a week with each shipment weighing about 150 pounds. Inbound, shipper receives at Birmingham emergency shipments from its Dallas and Houston warehouses. The inbound shipments total as much or a little more than the outbound shipments to these points. | Baggett, Mercury, and East Texas. | Transit time is important since the traffic consists of "rush" shipments. Shipper prefers direct, single-line service. The service of Mercury and East Texas have not been consistent. Existing schedules are unlikely, and shipper requires second-morning delivery. | Support. |
| 11. (71) Tennessee, Ala. | No shipper under Texas heading. | | | |
| 12. (72) Tubular Metal Products, Birmingham, Ala. Aluminum components for screen, door, and window frames. | From Birmingham to numerous specified points in Arkansas, Missouri, Mississippi, Texas, Louisiana, Oklahoma, and Illinois. Each week shipper has 10 movements to points in Arkansas with the average shipment weighing 500 pounds, three or four a week to Missouri with the same weight, three four a week to Texas weighing the same as above, one or two a week to Mississippi; some shipments to Texas because it has a warehouse at Dallas (In 1965 it moved 120,000 pounds to Dallas and through June 9, 1966 it moved 102,000 pounds); four or five a week to Oklahoma with the same average weight; four or five shipments a week to Chicago, Ill., with the same average weight; about three shipments to Baton Rouge and Shreveport, La., a week weighing the same average weight as Shreveport above. | No Arkansas, East Texas, Campbell, Arlington and Red Ball are used in single- or joint-line service. Gardner and Campbell are used to Missouri; Hyder to Baton Rouge, East Texas to Shreveport; Campbell to Mississippi, Gardner and Mercury to Texas; and Tennessee to Oklahoma. The single-line service of Gardner, Hyder, Baker, and Campbell are used to Chicago. | Shipper prefers single-line service, transit time is important because customers do not maintain large inventories. Shipper explained about (1) a shipment booked by Campbell to Springfield, Mo. on which 12 pieces were missing and later delivered, and (2) long transit times recently, (a) one shipment picked up by East Texas on 6/28/66, was not delivered to Shreveport until 9/8/66 (inclusive a weekend), (b) one was picked up by Campbell, 5/5/66, was not delivered to Kansas City until 5/9/66 (including a weekend), (c) one shipment booked by Hinds and Red Ball was picked up 5/24/66 and as of 7/25/66 was still on Hinds's dock at Birmingham, and (d) one shipment picked up at Springfield, 4/28/66, was not delivered to Birmingham until 5/6/66 (including a weekend). | Support. Jones, and Jones. Shipper is aware that single-line service is available to Kansas City and to Shreveport, La., and Houston and Beaumont, Tex. |
| 13. (73) Tuscaloosa, Ala. | | | | |
| 14. (74) Union Carbide Corp., Birmingham, Ala. Synthetic fibers. | From Birmingham to Baton Rouge (2,000 pounds a month), Lake Charles (2,000 pounds a month), Houston (2,000 pounds a month), New Orleans (7,000 pounds a month), and Shreveport, La. (500 pounds a month); Greenwood (1,000 pounds), Hattiesburg (600 pounds), and Yazoo City, Miss. (8000 pounds); and Fort Worth and Houston, Tex. All are LTL. Shipper has ads or eight movements a week to the Orleans weighing an average of between 500 and 1,000 pounds, between 10 and 12 shipments a month move to Mississippi during the same average weight as those to the Orleans. It ships 1,000 pounds a month to Fort Worth and about it ships to Houston it moves 2,000 | Red Ball, Shipper's tendered traffic. Campbell is used to Shreveport. Hyder is used to Hattiesburg and Vicksburg and Mercury is used to Fort Worth and Houston. Hinds and Hyder have been used to New Orleans. East Texas is used to Fort Worth. | Service from the plant to the Mississippi points and to New Orleans, single-line service to the other Louisiana points and not later than third day service to the Texas points. It complained that Hyder and Campbell were not satisfactory because they were not dependable and that it has had to store shipments handled by Hyder and Campbell. It has used Mercury since the last 2 to 3 years. Shipper's customers purchase only small "full-up" orders from it and they want quick delivery. It has not been | Support. Jones, and Jones. Shipper is aware that single-line service is available to New Orleans and to Shreveport, La., and Houston and Beaumont, Tex. |





Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 9. (69)—Con. | pounds. Shipper is principally concerned with traffic to New Orleans. | | able to obtain piggy service from Georgia... Shipper presented a study [illegible] of the shipments handled between [illegible] of April 20-26, 1966. Traffic consisted shown on [illegible] shipments to New Orleans, and 1 each to Lisbell, Metairie, Baton La., and to Jackson, Miss. Excluding weekends these shipments to New Orleans were delivered in 1 day, eight in 2 days, three in 4 days, and one in 6 days. | |
| 10. (80) Southeastern Tool and Die Company, Inc., Birmingham, Ala. Aluminum materials used to produce aluminum window screen frames. | From Birmingham to specified points in Missouri, Kansas, Arkansas, Mississippi, Louisiana, Oklahoma, Illinois, and Texas. Approximately 30,000 pounds moves each week to these States between 6/13/66 and 6/6/66, shipper had movements to Little Rock, Fort Smith, and Pocahontas, Ark.; Kansas City and Springfield, Mo., and Greenwood, Miss. All of the shipments were in LTL lots. Between 25 and 30 shipments were daily into the territory Bonnie and Jones used to serve. Their average weight would be between 300 and 500 pounds. Monthly, almost 5,000 pounds will move to Missouri and Kansas, 4,000 pounds to Arkansas, 1,000 pounds to Mississippi, 2,000 pounds to Louisiana; and 4,000 pounds to Texas. | Orleans and Campbell are used to Missouri and Kansas; Mercury and West to Texas; West and Campbell to Louisiana, Campbell and West to Mississippi, and Gardner, Campbell, and East Texas to Arkansas. | Shipper wants next-day service to New Orleans and to points in Mississippi, and second-day service to other Louisiana points, Arkansas, Texas, and Missouri points, and to Kansas City, Kans. Shipper indicates that it has difficulty with delivery time and tracing a shipment handled by Gardner. It states generally that it has experienced poor delivery service with Campbell and that on a few occasions Campbell missed pick-ups. Shipper has received an unspecified number of complaints from customers located in the area Jones and Bonnie used to serve. (The carrier or carriers involved are not specified). | Bonnie and Jones. Shipper has used Bonnie under its present authority and is satisfied with the service. Shipper indicates that Hunt renders good picking and delivery service. It cannot recall a complaint regarding the service of West Mercury tenders to shipper except-connecting service to Houston and Dallas. Other than West and Campbell, shipper is not aware of any single-line service from Birmingham to New Orleans and points in Mississippi except Hinds to Jackson, Miss. During June 1966 Gardner handled about 30 shipments for Southeastern and none had to be traced. |
| 11. (81) Sims Beverage Company, Birmingham, Ala. Beverages | From Birmingham shipments move to specified points in Arkansas, Texas, Louisiana, Tennessee, Missouri, Mississippi, Kansas, and Oklahoma. During May 1966 shipper had movements to Camden Jonesboro, Blytheville, and Little Rock, Ark.; Memphis, Nash., Houston, Dallas, and Fort Worth, Tex., Shreveport, Baton Rouge, West Monroe, and New Orleans, La., St. Louis and Springfield, Mo., Oklahoma City and Tulsa, Okla.; Wichita, Kans.; and Columbus, Jackson, and Greenwood, Miss. Shipper also has movements to Durham, Okla., and to and through Chicago, Ill. | West is used to Mississippi points and to New Orleans, La. East Texas is used to points in Arkansas, Texas, Tennessee, and Louisiana. Hyder is used to points in Texas and Louisiana. Gardner is used to points in Texas and Louisiana. Mercury is used to points in Tennessee is used to Oklahoma, Arkansas, and Tennessee. Campbell is used to Missouri, Arkansas, and Mississippi. West is used to Louisiana and Mississippi. Turnbull Transport and Gardner are used to Chicago. | Shipper wants overnight service to points in Mississippi and to New Orleans, second-day service to other Louisiana points; second-morning service to points in Texas, overnight service to Little Rock, and second-morning service to other Arkansas points, overnight service to Memphis, Tenn., and second-day service to terminal points in Missouri and Oklahoma. Although Campbell will pick up shipper's traffic in Little Rock, it moves the freight from Birmingham only on Monday, Wednesday, or Friday. Shipper introduced a transit time study on shipment handled by West to New Orleans, Baton Rouge and Jackson in January and February 1966. Excluding weekends, West's transit time was 2 days on 10 of 11 shipments to New Orleans, 10 of 17 shipments to Jackson, and on 1 of 3 shipments to Baton Rouge. Four of the remaining shipments to New Orleans were delivered in 3 days. | Bonnie and Jones. Shipper is satisfactorily used Bonnie to points in the South. It also has found Baggett's service satisfactory and is willing to try this carrier's overnight service to New Orleans. |
| 12. (82) Stone Fore Insurance Company, Birmingham, Ala., printed material and forms. | From Birmingham to between 12 and 15 points in Louisiana on a daily basis. About 12,000 to 15,000 pounds moves each month to points in Mississippi and Louisiana and the average weight of a shipment is from less than 100 pounds up to 200 pounds. Shipper expects a 10 percent annual increase in the volume of its traffic. It maintains between 12 and 15 branch offices in Louisiana. More shipments move to New Orleans than any other Louisiana points. | Campbell and Baggett are used occasionally. Campbell serves New Orleans on single-line service. | Shipper wants single-line service. Time is brought in important since the printed material is dated. Shipper introduced a list of 3" shipments from Birmingham to Louisiana points which were handled by Campbell and Red Ball in interline service (interchanged to Red Ball at either Jackson, Miss., or New Orleans) between 6/15/66 and 6/29/66. The list is not all inclusive. Out of total transit times of between 3 and 9 days Red Ball's elapsed time was between 1 and 3 days. Weekends were included. Shipper wants single-line second-day service to Houston. | Red Ball. Shipper believes that only Campbell can originate shipments at Birmingham and deliver them to New Orleans for interlining. Its support is limited to movements from Birmingham to Louisiana. |
| 13. (83) Gulf Bros. Corporation (Corp.), Gulfmen, Ala. Wood products. | From Gulfmen to Houston. Shipments move every 10 days to nearly TL lots. Shipper's volume of LTL movements is increasing. | McClam originates the traffic and terminates at Birmingham, Ala., with Mercury. | McClam originates the traffic and terminates at Birmingham, Ala., with Mercury. | Houston. Shipper has not investigated whether it has single-line service from Gulfmen to Houston. |
| 14. (84) Planet Southern | From Birmingham to Houston. Shipper has perishable movements. The LTL traffic varies between 1,000 and | Superior Trucking Company, Hyder, Baggett, Red Ball, | Shipper requires operating employee whose the shipments are loaded by overhead | Houston. |

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Summary of evidence of supporting shippers—Continued

(Docket No. [illegible])—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] | [illegible] | and Eagle Supply, a county hauler, is used to deadhead along with Ryder. Suggest interlining with Red Ball "on same load." | grease. It can used flat-bed equipment but experiences [illegible] problems. On one occasion Ryder could not provide open-top equipment although given days notice. "Transit time is important because now" time which shipper supplies have penalty clauses for delays. | |
| 27. (1973) Furniture pricing service, Birmingham, Ala. Automobile parts | From Birmingham shipper has about two LTL movements a week to Baton Rouge, La. The average shipment weighs 400 pounds. | Ryder and has service | Shipper wants consolidating service. | Denied. |
| 28. (1980) [illegible] Warehouse Steel Corporation, Birmingham, Ala. Iron fencing material | Shipper receives between 17,000 and 22,000 pounds a month from Houston on LTL lots. | Campbell delivers after interlining with Harris or Red Ball from Houston. Shipper uses private carriage on TL movements. | Shipper prefers single-line service. It checks only residential fencing from Houston. It reminds one sale it lost because it could not deliver on the date promised due to transportation problems. The proposed 2-or 3-day service from Houston would be beneficial to its business. | Denied. Shipper has not investigated the available single-line service from Houston to Birmingham. It uses a number of Ryder's single-line services between these points immediately prior to the hearing herein and expressed a willingness to try the service. |
| 29. (1983) [illegible] Air Conditioning Company, Spring Hill, Ala. Metal coolers | From Springville, shipper moves 1,700 pounds (4 shipments) a week to Houston, 2,500 pounds (4 shipments a week) to Dallas, and 1,200 pounds (4 shipments a week) to Beaumont. Shipper also has movements to San Antonio, Waco, and Fort Worth, Tex. | Suggests originating shipper's traffic. Shipper uses private carriage on TL lots. | Shipper wants direct, single-line service. It has experienced some loss and damage with the existing interline service. Three-day service to Houston, Dallas, San Antonio, and Beaumont would be acceptable. | Suggests. Shipper would continue to use its own equipment if the application is granted. |
| 30. (1984) Northington Air Conditioning Company, Decatur, Ala. Air conditioning equipment | From Decatur shipper has a monthly tonnage of 180,000 pounds to Dallas 30,000 pounds to Fort Worth, 135,000 pounds to Houston, and 135,000 pounds to points in California, Oregon, and Hawaii. About 90 percent of this tonnage moves in LTL lots weighing between 2,500 and 3,000 pounds. The TL shipments weigh about 25,000 pounds. | Suggests, Gardner, Ryder, and A-50. Suggests originates shipper's traffic at Birmingham. Mercury delivers it from Birmingham to Houston. Gardner originates shipments [illegible] to Fort Worth and Dallas and interlines at Memphis, Tenn. A-50 is used to Birmingham on shipments bound for the West Coast. | Most of shipper's products are manufactured for a specified job and often a penalty clause for delays is involved so time in transit is important to shipper. Shipper wants three-day service to points in Texas. Some of its units are set crated and excessive loading increases the number of damages. Single-line service is preferred because it facilitates tracing. | Suggests. Shipper is generally satisfied with the service it receives from Gardner. |
| 31. (1985) Adams Mercury-Continental Agency, Inc., doing business as Home Central, Birmingham, Ala. Home-style parts and accessories. | From Decatur, shipper receives at Birmingham about 3,000 pounds a month of various parts with the average shipment weighing about 400 pounds. | East Texas and Mercury deliver shipper's traffic. | Shipper wants 3- or 5-day service. It used Ryder once but the carrier did not deliver to shipper's place of business and shipper had to go 2.5 miles to pick up the shipment. | Suggests. Shipper has never complained to East Texas or Mercury about their service. It concluded that it did not know what transit time it was receiving from East Texas and Mercury. |
| 32. (1987) Diamond A Feature Shop, Anderson's Gap, Ala. Indian beads, rugs, horse trailers and western clothing. | Inbound from Dallas 10,000 pounds will move a year and from Fort Worth between 30,000 and 40,000 pounds a year. The average weight of the shipments is 500 pounds. Shipper also has movements from Houston, and Laredo, Tex., to Jackson's Gap. About 200 pounds a month moves from Houston. | East Texas and Mercury interlining with Suggest, the delivering carrier. From Houston, Mercury originates the shipments and interlines with Suggest at Birmingham. | Shipper wants 3- or 5-day service. It used Ryder once but the carrier did not deliver to shipper's place of business and shipper had to go 2.5 miles to pick up the shipment. | Suggest. North Alabama Express is available as a delivering carrier. Shipper, at the hearing, became aware that Ryder, holds single-line authority from the involved Texas points to Jackson's Gap. |
| 33. (1988) Stone and Engineer, Birmingham, Ala. Clothing. | From Birmingham to specified points in Texas, Louisiana, and Mississippi. A major portion of the 800,000 pounds shipper moves annually to points in the West moves to points in the three-state Shreveport, Houston. The average weight of each shipment is about 150 pounds. About 120,000 pounds additionally moves annually to points in Louisiana and Mississippi. Shipper also has movements to Fort Smith and Fayetteville, Ark. | Ryder is used to Mississippi and to some points in Louisiana. Cole is used to New Orleans, and East Texas, Gardner, and Tennessee to Texas. | Shipper wants the service of carriers capable of handling shipments to the smaller cities. It has limited dock space and therefore wants to use a carrier with broad authority. | Red Ball, Jones, and Dunham. Shipper uses Dunham and it indicates the service is satisfactory. Mercury's service to points in Texas such as Houston, Dallas, Shreveport, and Fort Worth is satisfactory. Although Campbell has rendered shipper satisfactory service, it has not used this carrier in single-line service from Birmingham to Baton Rouge. And, while shipper was aware that it could use Mercury to Mobile, Ala. and Red Ball to points beyond, it indicated that it prefers single-line service. |
| 34. (1989) [illegible] Company, Birmingham, Ala. Signs and sign materials. | Inbound to Birmingham, shipper receives between three and five shipments of sign materials a year, all of which are ordered on an emergency basis from Houston and Atlanta. | Suggest is used from Atlanta and Mercury from Houston. | Shipper wants overnight service from Atlanta and second-morning service from Houston. It introduced a transit time study on six shipments which underscore all of the shipments it received during this period, delivered between 7/19/84, and 12/23/85. Suggest handled two of the shipments from Atlanta and Mercury handled the remainder, which moved from Houston. Suggest picked up one shipment on a Friday and delivered it on the following [illegible] | Dismissed. |





Summary of evidence of supporting shippers—Continued

(Docket No. [illegible])—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 22. (1961)—Con. Furniture. | each shipment is between 100 and 2,500 pounds. The average shipment weights about 500 pounds. Shippers expects its business to increase about 25 percent each year. | Campbell, and Hunt are used to points in Louisiana. Jordana is used to Arkansas, and Campbell, Jordana, and Hunt are used to Mississippi. | requested at open air [illegible] Ryder did another requested that Ryder not be used. Shipper prefers single-line service because it involves less handling and better transit times. | Denied. Shipper uses carrier from which it [illegible] Mississippi. |
| 31. (1965) Holmes Distributors Birmingham, Ala. Carpet and related commodities. | From Birmingham shipper has about two LTL movements a week to Baton Rouge, La. The shipments weigh from a minimum to 2,000 pounds. | Campbell and Ryder are used to Baton Rouge. | Shipper wants second-morning service to Baton Rouge. Transit time is important because shipper's dealers do not have any stock. Shipper is not satisfied with the transit time being rendered by Campbell and no longer uses Ryder because the customer directs that Campbell be used. Single-line service is preferred. | Denied. Shipper uses carrier from which it [illegible] Mississippi. |
| 34. (1968) Plastic Line Corporation, Birmingham, Ala. Plastic counter tops and partitions in cartons. | From Birmingham to points in Texas including Beaumont, Houston, Orange, and Texas City. The shipments weigh between 40 and 500 pounds. Shipper has two movements a month to Baton Rouge. | To Houston, Mercury and Ryder have been used. | Shipper prefers single-line service. Transit time is important because the involved commodities are utilized in service stations, the construction of which is scheduled. Shipper's loading facilities are limited to two doors and it wants to a carrier outlet of carriers which serve it. | Denied. Shipper uses Jacobs's service to Mississippi. |
| 35. (1971) General American Transportation Co., Birmingham, Ala. Tanks, tank materials and parts and iron and steel. | From Birmingham to points in Mississippi and southern Arkansas. At the time of the hearing shipper did not have traffic moving but reported shipments to commence within 6 months of the hearing. | Shipper proposes to use both specialized carriers and regular-route carriers. | | Withdrawn and shipper was not aware of any single-line service from Birmingham to the destination territory. It indicated that there are carriers capable of handling its traffic to some Mississippi points, and concluded that inasmuch as it had not had an opportunity to use the existing service it could not determine whether it was adequate. |
| 36. (1974) James H. Cleary Co., Birmingham, Ala. Electronic equipment and supplies, batteries, and related, also picture frames. | Inbound from Atlanta to Birmingham shipper receives an average of 150 to 200 pounds a week. It also receives shipments from Los Angeles and San Francisco, Calif. | United and Georgia Highway are used from Atlanta. | Shipper wants 3-or 5-day service from California. If the application is granted it would route the California shipments through Dallas. Overnight service is required from Atlanta. United picked up shipments at Atlanta a day late a few weeks before the hearing. Shipper uses United's service frequently, however, and indicates that this carrier renders overnight service and it is sure that it does not make a timely pickup. | Denied. Shipper did not know exactly how many carriers operate daily between Atlanta and Birmingham. Shipper did not know that Francisco could render single-line service from California to Birmingham. It indicated that, if Mercury interlining with another carrier at Dallas could render 3- or 5-day service on shipments from California, its needs would be met. Shipper did not know at what time of day the Atlanta consignor requests pickup service on the cited instance regarding United. Suggests. |
| 37. (1980) Baldwin Manufacturing Company, Birmingham, Ala. Metal doors and metal door frames. | From Birmingham, shipper moves 30,000 pounds a month to the Houston area and 40,000 pounds a month to Dallas. About 65 percent of the shipments to Houston move to Houston proper with the remainder moving to points located within 50 miles of Houston. About 75 percent of the Dallas area shipments move to Dallas proper with the remainder moving through Dallas to points within 100 miles of Dallas. The average shipment weighs about 9,000 pounds and it moves about twice a week to each of the two points. | Mercury and East Texas. Transcon and Ryder were used. Connecting carriers handle the shipments from Dallas and Houston to their surrounding areas. | Shipper wants direct, single-line service from Birmingham to Houston and Dallas. Inasmuch as the involved commodities are utilized in extended construction projects, time in transit is important. Shipper expresses a need for second-morning service to Dallas and Houston. It indicates generally that the services of Transcon and Ryder are not satisfactory. The service of Mercury and East Texas are also described as unsatisfactory. Shipper indicates that in the 6 months before the hearing it had difficulty on two occasions in obtaining pickup service from Mercury. The [illegible] representative on one occasion in the 2 months before the hearing had to pickup a shipment at East Texas' dock in Dallas. | Suggests. Harris Alabama Express is available as a delivering carrier. Shipper, at the hearing, became aware that Ryder, holds single-line authority from the involved Texas points to Jackson's Gap. |
| 38. (1981) Ace Sign Company, Birmingham, Ala. Signs and sign materials. | Inbound to Birmingham, shipper receives between three and five shipments of sign materials a year, all of which are ordered on an emergency basis from Houston and Atlanta. | Suggest is used from Atlanta and Mercury from Houston. | Shipper wants overnight service from Atlanta and second-morning service from Houston. It introduced a transit time study on six shipments which underscore all of the shipments it received during this period, delivered between 7/19/84, and 12/23/85. Suggest handled two of the shipments from Atlanta and Mercury handled the remainder, which moved from Houston. Suggest picked up one shipment on a Friday and delivered it on the following [illegible] | Dismissed. |

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Summary of evidence of supporting shippers—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 48. (Illegible) | | | Remote. The delivery date on the other shipper's handled by Daggett was rejected. Of the shipments received by Mercury (including overboards), two were delivered in 1 days, one in 4 days and one in 5 days. | |
| 49. (1951) R.J. Cook Company, Bryan, Ala. Tank | From Bryan during 1951, shipper moved to (two-piece motor carrier 20,000 pounds (-42, 17% shipments) to Dallas, 6,000 pounds (-21 17% shipments) to Fort Worth, 20,574 pounds (-71 17% shipments) to Houston; and 113,000 pounds (-79 17% shipments) to all other Texas points, which shipments were through Houston or Galveston. Shipper also moved shipments to such points as Beaumont, Port Arthur, Waco, Dallas, and Abilene, City, Tex. Almost all of the involved traffic is 22% weighing from 500 pounds to 2,000 pounds, about 60 percent of its traffic moves in the last 6 months of the year. | I.C.S. Delivered, Daggett, Ohio and will interline with other carriers at Birmingham and Mobile, Ala. and Memphis, Tenn. Daggett originates most of shipper's traffic and the route is decided by the carrier. Red Ball, Thompson, Dyker and Mercury have been used on an interline basis. Service Investigating with A-B. | Support |
| 50. (1951 Southern Multiple Types Valve Corporation, Ala. Valves, pipes. | Inbound from Dallas to Union Springs. All shipments are truck. At the time of the hearing shipper had received one shipment from Dallas. The supplier has been unable to furnish all certain piece handled from Houston, Tex. and hopes to supply shipper from its Dallas plant. Shipper is expanding and expects to receive about 30,000 pounds a week from Dallas. The traffic would be nearly TL lots. | | Shipper wants a direct single-line service. It cannot obtain sufficient direct for large orders and it is penalized on prepayment shipments if it does not meet the completion date and transit time is important. | Support. Shipper has used applicant's service and describes it as satisfactory. It believes that it would have no objection to using East Texas and Dallas to Birmingham and Daggett to Union Springs. |
| 51. (1951 Southern Company, Birmingham, Ala. Plastic pipe and fish bags, superintendent-based, projectionist-owned-operators for food storage and display items. | From Montgomery during the 1946 shipper had movement of 413,811 pounds to Dallas, Tex.; 81,111 pounds to Houston, Tex.; 8,139 pounds to Fort Worth, Tex.; 500 pounds to Beaumont, Tex.; 434 pounds to Texas City, Tex.; and 43,670 pounds to other Texas points. The 13% shipments weigh between 100 and 1,000 pounds and 91 shipments weigh 40,000 pounds. During other months this volume doubles. Shipper is expanding its facility and expects the volume of traffic it ships to Texas to increase. All of shipper's traffic to points in Texas moved by or through Dallas and Houston. Of the above-described tonnage to Dallas, 30,000 pounds are handled in private carriage. | Support. Investing with Thompson. Shipper uses private carriage, East Texas, Red Ball and Eagle and also used Dyker and Daggett originally. Daggett originates shipper's traffic and interline it at Birmingham. | Shipper wants a direct single-line service. It investigated private carriage recently but to move it was unable to obtain the type of delivery service it desired and Daggett maintains the proposed service performs adequate service will no longer be used to Texas and shipper will close its Dallas distribution facility. Shipper allows a minimum of 5 days for delivery to Houston, Dallas, and Fort Worth. It wants ground-operating service to points in the destination territory. Consignees have requested by shipper regarding the existing service. | Support. Shipper is aware that it has a choice of two-line carriers from Montgomery to the Texas destinations. |
| 52. (1951) Air Heaters, Inc., Montgomery, Ala. | Has holds presently unconditional authority and several points in southeast Alabama. Its sales personnel for terminating are Montgomery and Birmingham, Ala. Its major influence on traffic moving between the points it serves is established Alabama, excluding Birmingham and Montgomery, on the one hand, and, on the other, Houston, Tex. and points beyond that wants to interline with Johnson at Montgomery. Presently and handled about 850,000 pounds of LTL and TL traffic. Inbound heaters and related equipment on the one hand, and, on the other, the area it serves in Alabama. | It interlines with East Texas, Service Dyker, Mercury, and Thompson of Birmingham. | Shipper has received complaints from its Alabama shipper that the existing interline service renders slow transit times. It suggested a method for the improvement of service from Montgomery to Houston, Shipper delivers a truckload of some of the shipments it interlined in December 1951 from Houston. The shipments were interlined at Birmingham, where they were transferred to Montgomery with Hunt. Including those the interline service handling would make about 50 percent of the shipments were delivered to Houston in 3 or more days and about 25 percent were delivered in 2 days. Those shipments were interlined with Mercury, East Texas, Dyker, Harris, Pinkerton, and Thomas. | Opposes. Thomas serves Montgomery and like not maintain a terminal at this point. Has notwithstanding interline with Johnson to points the better service would not include in the transit all of the shipments billed by Mercury at Houston. In November 1951 it was the general practice for Mercury to [illegible] 400 when it had a shipment for the latter to pickup at Mercury's dock. Although it knows the bill when it picks up the shipment at Mercury's dock, the receipt when it delivers it to Johnson at Montgomery it does not know the rate. Shipper is not interested in the rate. |
| 53. (1951 Baltimore Pennsylvania, Inc., Baltimore, Md. Lawn-metal plastic | From shipper's Birmingham warehouse daily LTL shipments are made to Baton Rouge, La. Shipper expected to serve the Texas points of Beaumont, Houston, and Orange from Birmingham after 5/1/52. The average shipment weighs between 400 and 600 pounds. Shipper experienced a seasonal peak (increase in business in 1950 over the same period in 1949. It has two or three movements a week to Baton Rouge. The above-described Texas points were served from shipper's Dallas facility about twice a week, with the shipments weighing between 700 and 2,000 pounds. After 5/1/52, shipper expected to close its Dallas facility and serve these points from Birmingham. Has shipper other L.C. hauling | Dyker, Campbell, and Tilling are used to Baton Rouge. | Transit time is important because shipper's customers do not maintain inventories. Shipper wants third-morning service on LTL shipments to Baton Rouge and second-or third-morning service to Texas. Single-line service is preferred. Shipper is not dissatisfied with the existing service to Baton Rouge but for some unspecified reason it has terminated the use of Campbell. | Thomas. Shipper has not investigated the existing service from Birmingham to the named Texas points. |
| 54. (1951) Mobile, Ala. | | | | |
| 55. (1948) Alumo Construction Corporation, Mobile, Ala. Paperboard | From Mobile to Houston, Dallas, Fort Worth, and Mineral Wells, Tex. Approximately 1.5 million pounds move to these points each month. The traffic moves in TL lots of about 47,000 pounds. Shipper expects this traffic to increase by 20 percent each year. In April 1952 shipper moved 504,410 pounds to Houston, 611,220 pounds to Dallas, 171,010 pounds to Fort Worth, and 220,621 pounds to Mineral Wells. | Private carriage, Mercury, Hunt and Johnson. | Shipper uses private carriage to Dallas and Fort Worth because it is unable to obtain the type of service it desires. It wants to reduce or terminate private carriage. Single-line service is preferred. Shipper expresses a need for Hunton's proposed overnight service to Houston. Shipper requested overnight service on two TL shipments in February and April 1952 from Mercury but Mercury offered between third-and fifth-morning delivery. Red Ball has declined to handle traffic to Houston because of the circuity | Hunton and Johnson. Shipper uses applicants' service and has found them satisfactory. It has not used Red Ball from Mobile to Dallas and it was not aware that Red Ball and Carnahan's have terminals in Dallas and interchanges with each other. Shipper indicates that it would use these services if the carriers offered an interest. Mineral Wells traffic, under the proposals, could be interlined at Dallas with Carnahan's. |





Summary of evidence of supporting shippers—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 47. (1951—) | Birmingham, Montgomery, Phoenix, Hot Springs, Baton Rouge, Bastrop, Alexandria, Alton, Beaumont (City), Florence, Jackson, Tenn., Kingsport, Memphis, Nashville, Nashville, Tenn., and Norfolk, Va. Shipper is also interested in service to the smaller communities in Arkansas. It ships to between 45 and 100 points in Alabama and East Texas. | | Its hauling the study period was introduced. The shipments served to points in Texas, Louisiana, Mississippi, and Arkansas. Shipper was not satisfied with the transit times rendered by either the original carriers or by the delivering carrier, Red Ball. | |
| 48. (1951) The Kent Corporation, Birmingham, Ala. Steel, tracking and conveyor-type [illegible] trailers and parts. | From Birmingham about one or two LT. shipments a week were to Houston, Tex. The shipments ran at an average of about 2,000 pounds. | Mercury | Transit time is important because shipper's distributors do not maintain inventories. Shipper has had complaints from its Houston distributor regarding the transit time Mercury is rendering. It wants 1- or 2-day service to Houston. | Denton. Twenty five percent of shipper's traffic is routed by customers. Shipper uses Denton to Miami, Fla. It could not recall the date of the last complaint it received regarding the service of Mercury. |
| 49. (1951) H. Lee and Company, Birmingham, Ala. Lawn, grass, hardware, and kitchen items. | Inbound to Birmingham shipments, weighing about 400 pounds are received every 2-weeks from Baton Rouge, La., and Beaumont and Houston, Tex. Outbound from Birmingham to Baton Rouge, Beaumont and Houston. Most of the inbound traffic consists of cane to be repaired. Inbound shipments of one connections were up to four and five times a week. | East Texas, Mercury, and Dixie. East Texas is used to points in Texas and Dixie is used to Baton Rouge. | Transit time is important because shipper does not maintain a full inventory. It wants 2-day service to Birmingham. On a shipment in 1948 Dyker held the movement in Chattanooga for 3 or 4 days. Shipper had to pick it up in Chattanooga itself. About 2 months before the hearing Cole delivered a damaged shipment although the carrier had a representative examine the shipment at the time of the hearing it had not settled the claim. | Denton. When a customer needs a saw in Birmingham for repairs the customer down the routing time about 10 percent of the time the customer selects the carrier to be used when the required saw is shipped from Birmingham. Denton is used satisfactorily by shipper to Mississippi. Shipper did not know of any single-line service from Birmingham to Beaumont and Houston other than East Texas and Mercury. It does not believe that Denton holds authority to transport the commodities to Baton Rouge. |
| 50. (1950) Allied Foods Co. of Alabama, Birmingham, Ala. Fence fittings | Inbound to Birmingham from Houston for between 5 and 10 shipments are received a week from Houston, depending on the season of the year. The shipments weigh between 500 and 2,000 pounds. Shipper, in the first 4 months of 1952, did more business than it did in all of 1951. | Mercury, Dyker, and East Texas interline with Gordons at Memphis Trans. Brownwell interlining with Dale is used two or three times a week. Red Ball interlining with Gordons at Memphis is also used. | Transit time is important because shipper does not maintain a full inventory. It wants 3-day service to Birmingham. On a shipment in 1948 Dyker held the movement in Chattanooga for 3 or 4 days. Shipper had to pick it up in Chattanooga itself. About 2 months before the hearing Cole delivered a damaged shipment although the carrier had a representative examine the shipment at the time of the hearing it had not settled the claim. | Denton. Shipper satisfactorily uses Denton's service to the points it serves. It indicates that it was not aware that East Texas had single-line service from Houston to Birmingham. With the interline service of Red Ball and Gordons, shipper indicates that it receives 2-day service. |
| 51. (1951) Baltimore Pennsylvania, Inc., Baltimore, Md. Lawn-metal plastic | From shipper's Birmingham warehouse daily LTL shipments are made to Baton Rouge, La. Shipper expected to serve the Texas points of Beaumont, Houston, and Orange from Birmingham after 5/1/52. The average shipment weighs between 400 and 600 pounds. Shipper experienced a seasonal peak (increase in business in 1950 over the same period in 1949. It has two or three movements a week to Baton Rouge. The above-described Texas points were served from shipper's Dallas facility about twice a week, with the shipments weighing between 700 and 2,000 pounds. After 5/1/52, shipper expected to close its Dallas facility and serve these points from Birmingham. Has shipper other L.C. hauling | Dyker, Campbell, and Tilling are used to Baton Rouge. | Transit time is important because shipper's customers do not maintain inventories. Shipper wants third-morning service on LTL shipments to Baton Rouge and second-or third-morning service to Texas. Single-line service is preferred. Shipper is not dissatisfied with the existing service to Baton Rouge but for some unspecified reason it has terminated the use of Campbell. | Denton. Shipper has not investigated the existing service from Birmingham to the named Texas points. |
| 52. (1951) Air Heaters, Inc., Montgomery, Ala. | Has holds presently unconditional authority and several points in southeast Alabama. Its sales personnel for terminating are Montgomery and Birmingham, Ala. Its major influence on traffic moving between the points it serves is established Alabama, excluding Birmingham and Montgomery, on the one hand, and, on the other, Houston, Tex. and points beyond that wants to interline with Johnson at Montgomery. Presently and handled about 850,000 pounds of LTL and TL traffic. Inbound heaters and related equipment on the one hand, and, on the other, the area it serves in Alabama. | It interlines with East Texas, Service Dyker, Mercury, and Thompson of Birmingham. | Has received complaints from its Alabama shipper that the existing interline service renders slow transit times. It suggested a method for the improvement of service from Montgomery to Houston. Shipper delivers a truckload of some of the shipments it interlined in December 1951 from Houston. The shipments were interlined at Birmingham, where they were transferred to Montgomery with Hunt. Including those the interline service handling would make about 50 percent of the shipments were delivered to Houston in 3 or more days and about 25 percent were delivered in 2 days. Those shipments were interlined with Mercury, East Texas, Dyker, Harris, Pinkerton, and Thomas. | Opposes. Thomas serves Montgomery and like not maintain a terminal at this point. Has notwithstanding interline with Johnson to points the better service would not include in the transit all of the shipments billed by Mercury at Houston. In November 1951 it was the general practice for Mercury to [illegible] 400 when it had a shipment for the latter to pickup at Mercury's dock. Although it knows the bill when it picks up the shipment at Mercury's dock, the receipt when it delivers it to Johnson at Montgomery it does not know the rate. Shipper is not interested in the rate. |
| 53. (1951) Baltimore Pennsylvania, Inc., Baltimore, Md. Lawn-metal plastic | From shipper's Birmingham warehouse daily LTL shipments are made to Baton Rouge, La. Shipper expected to serve the Texas points of Beaumont, Houston, and Orange from Birmingham after 5/1/52. The average shipment weighs between 400 and 600 pounds. Shipper experienced a seasonal peak (increase in business in 1950 over the same period in 1949. It has two or three movements a week to Baton Rouge. The above-described Texas points were served from shipper's Dallas facility about twice a week, with the shipments weighing between 700 and 2,000 pounds. After 5/1/52, shipper expected to close its Dallas facility and serve these points from Birmingham. Has shipper other L.C. hauling | Dyker, Campbell, and Tilling are used to Baton Rouge. | Transit time is important because shipper's customers do not maintain inventories. Shipper wants third-morning service on LTL shipments to Baton Rouge and second-or third-morning service to Texas. Single-line service is preferred. Shipper is not dissatisfied with the existing service to Baton Rouge but for some unspecified reason it has terminated the use of Campbell. | Denton. Shipper has not investigated the existing service from Birmingham to the named Texas points. |
| 54. (1951) Mobile, Ala. | | | | |
| 55. (1948) Alumo Construction Corporation, Mobile, Ala. Paperboard | From Mobile to Houston, Dallas, Fort Worth, and Mineral Wells, Tex. Approximately 1.5 million pounds move to these points each month. The traffic moves in TL lots of about 47,000 pounds. Shipper expects this traffic to increase by 20 percent each year. In April 1952 shipper moved 504,410 pounds to Houston, 611,220 pounds to Dallas, 171,010 pounds to Fort Worth, and 220,621 pounds to Mineral Wells. | Private carriage, Mercury, Hunt and Johnson. | Shipper uses private carriage to Dallas and Fort Worth because it is unable to obtain the type of service it desires. It wants to reduce or terminate private carriage. Single-line service is preferred. Shipper expresses a need for Hunton's proposed overnight service to Houston. Shipper requested overnight service on two TL shipments in February and April 1952 from Mercury but Mercury offered between third-and fifth-morning delivery. Red Ball has declined to handle traffic to Houston because of the circuity | Hunton and Johnson. Shipper uses applicants' service and has found them satisfactory. It has not used Red Ball from Mobile to Dallas and it was not aware that Red Ball and Carnahan's have terminals in Dallas and interchanges with each other. Shipper indicates that it would use these services if the carriers offered an interest. Mineral Wells traffic, under the proposals, could be interlined at Dallas with Carnahan's. |

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 50. (281) Denton Brothers Lumber Company, Tuscaloosa, Ala. Wooden pallets | All involves outbound traffic from Tuscaloosa (a 75 shipments to customers at Houston, during June and July 1966 about 680,000 pounds moved by rail to Houston, and approximately 100,000 pounds moved in shippers' leased equipment. | Louisville trucks and rail. | Shipper expected increased business and desires to give up private carriage. One of the Houston customers has requested more truck deliveries in place of rail deliveries. Transit time is important because shipper's customers do not place orders for pallets until they need them. | Support. If the application is granted shipper would render all of Houston traffic to Baggett. |
| 51. (285) Fabrics, Inc., Montgomery, Ala. Sewing items, pallets, pads, and shipments | From Montgomery to Dallas, Tex. and other points in Texas. | Mowbray's direct service. Joint-line service of G-GR and A.A.A. and Baggett from Birmingham. | Wants 2-day or third-morning service. Shipper no longer uses Mowbray due to pickup delays. | Baggett. Shipper assumes single-line service will be quicker. |
| 52. (286) Standard Brands, Inc., Birmingham, Ala. Grocery products | From Birmingham shipper has LTL movements to Vicksburg and Natchez, Miss., and Shreveport, Slidell, Shreveport, Baton Rouge, Bayville, Alexandria, Plaquemine and Cut Off, La. During March 1966 shipper had eight movements to Vicksburg weighing 5,215 pounds. Shipments to Shreveport still average between 5,000 and 6,000 pounds and the average weight of each shipment is about 900 pounds. | Campbell, Hunt, Cole, and Hyder originate shipper's traffic. Shipments to Alexandria and Louisiana points are not interchanged with Red Ball. | Transit time is important because shipper's customers are undertaking limited inventories. It prefers single-line service to avoid inconsistencies in transit times. | Red Ball. |
| 53. (294) The Carnation Company, Sandia, Wis. Feeding business | From shipper's Scottsboro, Ala. plant to points in the Southeast. The shipments are LTL. | Hawkins Exp. to Birmingham, and then Riverlead. Ryder is used as an origin carrier. | Shipper uses a three-line haul to 19 destinations in Texas. If applicant were granted the authority, shipper's traffic would be handled by two lines. Other points in Arkansas and Louisiana, not served in two-line hauls will be served direct. | Unreleased. |
| 54. (295) Longview Lumber, Inc., Mer Orleans, La. Cartons | From supplier's warehouse at Birmingham to points in Louisiana, Arkansas, and Texas. Between three and four LTL and TL shipments move a month. | Harris, Hyder, and Boston | Joint-line service is unsatisfactory due to transfers. Shipper wants 2-day service. | Boston. |
| 55. (351) Dayton Rubber Co. & Chemical Co., Birmingham, Ala. Roll tiles, concrete reinforcement, structural imports, building products. | From Birmingham to points in Alabama, Arkansas, Tennessee, Louisiana, Texas, Mississippi, Missouri, and Florida. Shipments range between 30 and 12,120 pounds. | Gardner, Hyder, Mowbray, East Texas, A-M, Hart, Cole, Campbell, Greyhound, Main, Trimble, ABX, Baggett, Grand Hall, Trailways, and Texas Overlay. | Shipper wants overnight service to Little Rock and second-morning service to Dallas and Houston. It must now allow between 2 and 3 days lead time for delivery to Dallas and Houston, the Little Rock, Ark., and New Orleans, La. | Boston and Jones. Shipper cited specific instances of inadequate service on the part of Campbell. |
| 56. (352) Wallace Wire Works, Inc., Birmingham, Ala. Wire products | From its plants at Birmingham and Houston to points in Mississippi, Louisiana, Memphis, Arkansas, Kansas, and Texas. Also from Chicago and Joliet, Ill., to Birmingham and Houston, plant sites. Outbound shipments range between 500 and 600 pounds averaging about 700 shipments a month. Inbound shipments from Chicago move once or twice a month and average between 15,000 and 40,000 pounds. From other shipments are received every 2 or 3 months averaging between 200 and 300 pounds. | Campbell, Hunt, Hyder, Mowbray, Gardner, and East Texas. | Shipper wants overnight service to points in Mississippi and Louisiana, second-day service to Arkansas, and third-day service to points in Texas. Average shipment times from Birmingham to San Antonio is 4 days; from Birmingham to Baton Rouge 4 days; from Birmingham to Memphis, Tenn., 2.5 days, and from Birmingham to Shreveport, La. 3 days. | Boston, Johnson, Strickland, and Jones. Should the Texas cut include all shipments which moved during the period in question. |
| 57. (353) Texas Originals, Inc., Montgomery, Ala. Retail chains | From Montgomery, to Fort Worth, Dallas, and Houston, Tex. During a [illegible] period shipper shipped 1,197 pounds to Fort Worth, 854 pounds to Dallas, 588 pounds to Houston, and 5,073 pounds to points beyond Texas for a total of 8,484 pounds with shipments weighing between 100 pounds and 2,500 pounds. | Baggett, Hunt, Red Ball, Campbell, Chapparosette, and Hawkeye. | Shipper needs faster transit time. Single-line service to Dallas would allow company to connect to some points throughout the south. | Baggett. |
| 58. (360) Continental Gin Company, Prattville, Ala. Cotton gin machinery and related parts | From Prattville to Dallas Tex. about 750,000 pounds moved annually, with shipments ranging between 50 and 5,000 pounds. | Baggett, Mowbray, Transcon, and Private carriage. | Joint-line service inadequate because too many interchanges have caused delays in delivery. | Baggett. The terminal traffic is seasonal. |

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 59. (362) Thornton-Johnson Co., Montgomery, Ala. Clothing | From Montgomery to points in Texas. Approximately 150,000 pounds moved annually. Shipments average 350 pounds each. | Mowbray, Hunt, and Red Ball. | The unprofessed failure to pick-up. Wants proposed 2-day single-line service, which would allow company to interchange 6:30 h-hours delivery time to many "texas points." | Baggett. |
| 60. (367) Henry L. Berman Flooring Co., Inc., Birmingham, Ala. Floor tile | From Houston, Tex., to Birmingham. Receives between 20 and 25 TL shipments a year, averaging between 30,000 and 35,000 pounds each. | Hyder, Mowbray, and East Texas. | Time in transit is important because company cannot stock tile in its warehouse and when it receives an order full-carry must be made in one or two days. Also shipper feels an additional carrier available on competition would help the existing three carriers being used at present. | Hyder. |
| 61. (382) Lowder Machine & Foundry Company, Birmingham, Ala. Castings | From Birmingham to Baton Rouge, La., and Houston, Tex. About 70 tons moved annually. Shipments range between 7,000 and 9,000 pounds each. | Hyder and Mowbray. | Wants additional service available. Hunter would give 1-day fourter service. Wants fourter pick-up service. | Hunter and Boswell. |
| 62. (417) Bullard Manufacturing Co., Birmingham, Ala. Steel doors and frames | From Birmingham to points in Tennessee, Mississippi, Arkansas, Missouri, Kansas, Louisiana, Texas, Illinois, and Ohio-tone. Monthly shipments range between 25 and 30,000 pounds between 1/12/66, and 12/31/66, to States not listed below. To Illinois about 3,000 pounds moved daily; to Louisiana between 2,000 and 5,000 pounds twice a month; to Arkansas one shipment a week averaging between 2,000 and 3,000 pounds; and to Missouri between 1,000 and 3,000 pounds moved daily. | Campbell, Hyder, Mowbray, East Texas, and Mowbray. | Existing services inadequate: Wants next-day service to points east of Little Rock, Ark., and second-day service to points beyond. | Wilson and Jones. Shipper states that it has single-line service to many areas, but is using joint-line service by carriers giving a more reliable service. |
| 63. (424) Zenith Products Corp., St. Paul, Minn. Tapes | From the facility of shipper's subsidiary at Centre, Ala., to Houston, Dallas, and Fort Worth, Tex. About 1,500 pounds, 900 pounds, and 4,000 pounds moved weekly to the respective cities. Company ships to approximately 17 or 18 other points in Texas that are off-route points and weekly shipments would be about 5,000 pounds. | Baggett, Mowbray, Thornton, and Boswell. | Joint-line service inadequate. Shipper wants single-line service for better transit time. Has experienced difficulty in getting pickups on time. | Baggett. |
| 64. (427) Universal Tube Division, Birmingham, Ala. Copper tubing | From Birmingham, to points in Mississippi, Arkansas, Louisiana, Tennessee, and Florida. During a 9.5 month period in 1966, approximately 30,000 pounds moved to points in Arkansas, about 30,000 pounds to Mississippi points, about 5,000 pounds to Louisiana points, and about 10,000 pounds to Memphis, Tenn. No specific figures were given for Florida points, but 3.4 million pounds moved collectively to the named destination States during a 9-month period 1966 inclusive of the above period. | Campbell, Gardner, East Texas, Hunter, Hyder, Hart, and Mowbray. | Shipper wants second-day service to points in Arkansas, and overnight service to other destination points. Average elapsed time to Mississippi points is one 6 days, to Louisiana points 7 days, to Tennessee 7 days, to Arkansas 5.1 days. If Florida figures are available 7 elapsed time includes weekends. Shipper is not satisfied with the service of Hyder. | Thornton and Jones. Transit study includes all shipments during period reviewed. |
| 65. (430) Southeastern Products Corp., Pelham, Ala. Horizontal paving and pavers. | From Pelham, to Houston, and return. Outbound, company ships approximately 1,000 pounds about eight times a year to one Houston customer; about 2,000 pounds monthly to another customer; and about 1,000 pounds monthly to a third customer. Inbound, company receives about 6,000 from Houston annually. | East Texas, A-M, and Hall. | Provides single-line service and meets faster transit time. | Boston and Baggett. |
| 66. (441) Ordnance Foundries, Inc., Birmingham, (Irondale) Ala. Iron castings | From Birmingham to Baton Rouge, La; Houston and Fort Worth, Tex.; Greenville, Miss.; and Shreveport, La. The shipments monthly or about 2,000 pounds a shipment to each point. No tonnage figures given for Fort Worth, Greenville, and Shreveport. | Hyder, East Texas. | Produces single-line service. | Boston and Carmichael. |

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Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 87. (683) Hamilton Cosmos Co., Birmingham, Ala. Steel frames and posts | From Hamilton to Birmingham. The shipments serve monthly ranging between 3,000 and 5,000 pounds | I.C.C. | Wants faster service in making delivery. | Denied. |
| 88. (684) Hamrick-Hamilton, Inc., Pelham and Birmingham, Ala. Hardware merchandise | From plant sites at Pelham and Birmingham, to Mobile, Ala., and Pensacola, Fla. and from points in Illinois, Michigan, Pennsylvania, New York, Texas, and Mississippi, to Pelham and Birmingham. Outbound, about 10 million pounds serve annually to Mobile, and about 3 million pounds serve annually to Pensacola. Inbound, about 900,000 pounds serve yearly from Texas points, and about 1 million pounds serve annually from points in Mississippi | G.F.A., Watson, Campbell, Johnson, Strickland, Gardenia, West, Cole, Ross Hawley, Associated, Central, and Southern Railroad | Wants faster transit time, such as proposed second-day service from Scranton to Birmingham and Greenville, to Pelham. Average elapsed time from Texas points is 6.1 days, from Mississippi 3.3 days. Weekends included in elapsed time. | Roadway and Strickland. Transit study only covers about 15 percent of shipments which served between 9/31/56 and 12/31/56. |
| 89. (682) James A. Head & Co., Birmingham, Ala. Office equipment and supplies | From Wichita Falls, Carrollton, Tex., and Atlanta, Ga., to Birmingham. It receives 25 shipments monthly from each point. | Gardenia, Tennessee, and Georgia Highway | Needs faster service. Wants third-day service from Wichita Falls, second-day from Carrollton, and one-day from Atlanta. Average transit time, including weekends, is 4.7 days, from Wichita Falls, 6 days from Atlanta, and 6.1 days from Carrollton. | Strickland. Specific tonnage not given. Transit study includes all shipments during the period. |
| 90. (683) Chemical Solvent Co., Birmingham, Ala. Chemicals and compounds, in drums. | From Birmingham to points in Mississippi, Louisiana, Arkansas, and Texas approximately 9,625 pounds serve annually to the destination States collectively. | Campbell, Ryder, and Dealers. | Needs faster service. Wants the proposed second-day service to Texas points, and overnight service to Mississippi points. | Strickland. Shipper's commodities require covered vehicles. |
| 91. (679) Gamewell, Inc., Huntsville and Florence, Ala. Clothing | From Huntsville, and Florence, Ala., to points in Texas. About 3.75 million pounds serve collectively from these points annually. | Gardenia, Ryder, and Hall, East Texas, Strickland, and Consolidated | Wants more consistent service and wants third-day service. | Rejected. Shipper is satisfied with Gardenia's single-line service to Dallas, and it is satisfied with Roadway's service to some Texas points. |
| 92. (676) Industrial Piping Supply Corp., Bessemer, Ala. Pipes, valves, and fittings | From Bessemer, to points in Mississippi, Louisiana, Arkansas, Florida, Tennessee and Texas. Fifty-eight shipments totaling 78,431 pounds moved collectively to the destination States between 3/31/56and 6/30/56. | East Texas, Gateway, Campbell, West, Ryder, and Cole | Prefers single-line service. Wants overnight service to Louisiana and Tennessee points, and second-day service to others. Average transit time to Tennessee is 2.0 days, and to Mississippi 5.9 days. | Rejected. Shipper made specific complaints against Campbell. Transit study includes all shipments during period covered. |
| 93. (681) Hill-Behan Supply Co. Inc., Birmingham, Ala. Screws, fastening devices, grills, and registers. | From Fort Worth, and Mineral Wells, Tex., to shippers destination at Birmingham and Gadsden, Ala. Receives about 9,500 pounds a year from Fort Worth, and between 8,000 and 10,000 pounds a year from Mineral Wells to Birmingham, with occasional shipments to Gadsden. | Red Ball, Cole, Dealers, and Gardenia. | Wants between 1-and 3-day service from and to origin and destination points. Shipper states that present transit time averages "about 4-week." | Strickland. |
| 94. (687) None, Ala | Has shipper under Fw. hauling | | | |
| 95. (704) Phillips Supply Company, Gadsden, Ala. School furniture, fixtures and supplies, chairs, tables and trays, and restaurant equipment | From Conway, Ark., Kansas City, Kans., Houston, Tex., and Dallas and Fort Worth to Gadsden. It receives from Conway 30 TL a year, from Kansas City 1 TL a week, from Dallas between 6 and 8 truckloads a year, and from Dallas 6 or 7 truckloads a year. | Hall, Jones, Dawson, Thornton, Red Ball, Baggett, Rose, Cavanaugh, Ryder, Hackney, and Hathaway | Wants better transit time with less damage in transit. Average transit time about 4 days. Wants overnight or 2-day service from Conway, Dallas, and Kansas City. Wants overnight service from Boston to Gadsden | Denied. Shipper prepays a substantial portion by private carriage. |
| 96. (705) Davis, Inc., Birmingham, Ala. Heating equipment and supplies | From Birmingham to points in Mississippi, and Louisiana. Shipped in excess of 100 LTL shipments to the above points from 6/3/56 to 11/30/56. Weight was from 40 to 500 pounds. | Hart, Campbell, and Ryder. | Present service is too inconvenient. Transit exceeds time in from 1 to 3 days. Wants general overnight service. | Denied. |







Summary of evidence of supporting shippers—Continued

ALABAMA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] (683) Ed Hart Motors Corporation, Oklahoma City, Okla. (Hubbard Bros. Furniture Inc., Oklahoma City, Okla. (Hart's Super Mart), Birmingham, Ala. Store fixtures | From Hart's plant at Birmingham to Fort Smith and Little Rock, Ark., Jackson, Kansas City, and St. Louis, Mo., Wichita, Kans., and Texas and Oklahoma City, Okla. Shipped in excess of 200,000 pounds to above points in a designated 5-mos period prior to the hearing | Thornton, Campbell, and Dale | Needs faster transit time. Wants overnight service from Birmingham to Little Rock, and second-morning service to other points. | Denied. Several carriers offer single-line service. |
| 98. (685) Nelson Steel Corporation, Birmingham, Ala. Steel bars and plates | From Birmingham to points in Mississippi, Louisiana, Arkansas, Texas, Missouri, and Kansas. During the last 3 months of 1956 shipper made 50 shipments to the above points. Average weight is about 2,000 pounds | Baggett, West, Jay Lines, Red Ball, Thornton, Service, Red Arrow, Jones and Eagle. | Satisfies service to the above points + to 5 days for delivery. | Denied and cease. |
| 99. (684) Thames Handley Hardware Co., Inc., Pelham, Ala. General goods | From points in Tennessee, Arkansas, Texas, Mississippi, Colorado and Missouri to shipper's facilities located at Pelham, Montgomery, Huntsville, Bessemer, West Gate, and Mobile, Ala.; Pensacola, Miami, and Orlando, Fla.; Memphis, Chattanooga and Huntsville, Texas, and Atlanta, College Park and Tucker, Ga. Thirty LTL shipments weighing 17,000 pounds were shipped between 12/11/56 and 1/2/57, as follows: to Mobile, Ala., from Fraser, Tex. 1, from Fergson (City, Ark. 2, from Memphis, Tenn. 2, from Little Rock, Ark. 1, from Harrison, Ark. 2, from Kansas City, Mo. 1, from Greenwood, Miss. 1. To Orlando, Fla. from Memphis, Tenn 1, from Houston, Tex. 2, and from Greenville, Miss. 1. This amounts to 25 percent of traffic from the points during the period of time surveyed. | Gardenia, Campbell, Dalton, and Dell. | Present service gives inconvenient transit time. From Texas to Pelham, wants second-morning service, third-day to Orlando, and fourth-day to Miami. From Kansas City needs second-day service to Alabama, Georgia and Pensacola, Fla. and one-night service from Memphis to Alabama and Georgia | Denied. Shipper also also supported Red Ball. General existing carriers can serve shipper's traffic in satisfactory service. |
| 100. (686) Alabama, Ala. | Has shipper under Fw. hauling | | | |
| 101. (680) Servco Copper and Brass Inc., Rome, N.Y. Aluminum articles | From shipper's Scottsboro, Ala., plant to points in Mississippi, Arkansas, Louisiana, Texas, Missouri, and Kansas. | Shipper supported the plant to open in 1947. | Wants single-line service between competitive two single-line services. Wants overnight service to points within the action and second-day service to points beyond that action. | Denied. Service would not permit interchange with the connecting roads. Shipper has supported other carriers but it appears that its general shipments require the availability of several carriers. Since 1947 shipper has supported in carriers, including Texas Trans., Baggett, Dealers, Cavanaugh, Cole, Jenkins and Eagle for service from Scottsboro. Needs currently-range. |
| 102. (681) Goodyear Tire & Rubber Company, Akron, Ohio. Tires and material goods | From shipper's Gadsden, Ala. plant to Rossmart, Cedartown, and Cartersville, Ga., Topeka and Kansas City, Kans., and New Orleans, La. In 1956 shipper moved 20.5 million pounds to Topeka, 1.1 million pounds to Kansas City, 8.6 million pounds from Topeka to Gadsden, and 20.9 million pounds from the three Georgia plants to Gadsden. Movements are 90 percent TL, and 2.4 million pounds moves from Gadsden to New Orleans annually. | Holloway, De Bary Runner, Ryder, Cole, Dixie and Thornton. | Shipper wants more and better single-line service. Wants 2-day service on TL and 3-day service on LTL. | Denied. Holloway and Roadway serve shipper in single-line service between Gadsden (service through Memphis and Dallas). Roadway's route is circuitous and they certainly serve New Orleans from Gadsden but shipper states that he currently want to handle inbound freight. |
| 103. (687) Gordon Chemical Company, Mobile, Ala. Chemicals | From Mobile to Houston (10,000 pounds a week) and Port Arthur (5,000 pounds a week), Tex. Hiway percent of the traffic is LTL. | Gateway and Red Ball | Present service is too slow. Wants single-line service removing 3-day 3-day service to Houston and Port Arthur. | Rejected. Fifty shipments in the last 6 months were declined. |
| 104. (686) United Chair Company, Lanett, Ala. Office chairs | From Lanett, Ala. to Dallas, Fort Worth, Beaumont, and Houston, Tex. In 1956 shipper moved in excess of 200,000 pounds to the above points. All shipments were LTL with an average weight of between 500 and 2,000 pounds. | Baggett, Dealers, Red Ball, Ryder, and Gateway | Prefers single-line service. Wants faster transit time. Single-line service would essentially insure elimination of damage | Rejected. Ryder can carry some of the involved points directly. Shipper does not recall the last time a customer complained about the delivery of shipments being delayed or damaged. |

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Summary of evidence of supporting shippers—continued

CASE NO.

| Shipper, location and commodities | Origins, destination, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and reasons |
|---|---|---|---|---|
| 4. (783) Murphy Farm Company, Newberry, Ark. Truck parts. | Inbound from Atlanta, Ga. to Newberry, on-order of its dissatisfaction with the service from Atlanta. Shipper has orders to obtain parts from Oklahoma City, Okla. If it had satisfactory service from Atlanta its orders for truck parts would be placed at this point. Shipper receives its shipments over business day, with the shipments averaging between a few pounds and several hundred pounds. It would tender applicant between 200 and 600 pounds weekly. | Red Line is the initial carrier (interline at Memphis, Tenn. on the Atlanta shipments, and at Little Rock, Ark. on the Joplin shipments | It...ons wants a fast, consistent all daytime service from Atlanta. It requires the proposed coordinated service | Interlined. |
| 5. (1108) Dixie Flour & Cereal Company, El Dorado, Ark. Carpenting and flour coverings. | Shipper receives at El Dorado 3 or 4 shipments a month, weighing 500 to 700 pounds each, from Dalton and Atlanta, Ga. It also receives shipments from Rome and Fitzgerville, Ga. | T. I. M. E., Dixie, Georgia Highway, Cresent, and Powell | Shipper misses 10 days from points in Georgia to El Dorado. It wants 3- or 4-day service. Transit time is important to shipper since many of the builders are in supplies have deadlines. A transit time study was introduced showing that between February 2, and September 27, 1947, on some of its traffic, namely Dixie interlined shipments, to El Dorado from Atlanta, Rome and Fitzgerville, transit times were between 6 and 10 days including weekends. All the shipments were delivered by Atlas. | Interlined. Shipper is not aware of any single-line service from Atlanta to El Dorado. |
| 6. (1239) Lion Oil Co., El Dorado, Ark. Petroleum petroleum products | From El Dorado 75 LTL shipments in May and June 1948 moved to and through Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. These shipments had an average weight of 2,387 pounds. Shipper moves about 12 TL a month in private carriage to points in Mississippi. It ships about 60,000 pounds a month by two-line carriers to Birmingham and Atlanta | No shipments to Alabama, Georgia, Florida, South Carolina, and North Carolina, Harris, Red Ball, and Atlas originate the traffic and interline it at Memphis, Tenn. Private carriage is also used to points in Arkansas, Tennessee, and occasionally into Texas. | Shipper wants single-line reasonably consistent service. It commenced using private carriage to Mississippi after being informed by Arkansas-Best that this carrier no longer wanted to handle shipper's traffic through Greenville, Miss. | Interlined |
| 8. (1290) Remington Arms Machine Company, Bowery, Ark. Cotton machine. | From Bowery to Atlanta, Ga. and Birmingham, Ala. Approximately 30 tons a year is shipped from Bowery to Atlanta and between 12 and 15 tons a year from Bowery to Birmingham. The shipments are a LTL and weigh between 40 and 600 pounds. Shipments are made to Atlanta approximately twice a week and to Birmingham weekly. Traffic also moves to New York, N.Y., Philadelphia, Pa., Richmond, Va., and Miami, Fla. | Powell originates the traffic and interlines at Memphis, Tenn. with Gardner, T.I.M.E., Harris, Ryder, and Bowman Springsher, a Swinger Forwarder, and Woodbury are used for delivery of shipments to New York interlining at Memphis | Shipper wants 3-day service to Atlanta. It is not satisfied with the existing service to this point. Shipments would be originated by Powell and interlined at Little Rock, Ark. with applicants. Shipper's competition has a warehouse in Atlanta so time in transit is an important factor. Complaints have been received with respect to requests times to Birmingham and some orders have been cancelled. Shipper also complains about the transit times to the other specified points to which it ships. | Bowman and Jones. Bowman presently interlines with Powell at Memphis. If the application were granted the interline point would become Little Rock. Shipper is not satisfied with the existing Powell-Bowman interline service. |
| 9. (1292) Ball Co Company, Elmhurst, Ohio. Complete canner, closures, other cans, paints, and tin plate. | Inbound to shipper's plants at Springdale and Blytheville, Ark. from Birmingham, Ala. and Atlanta, Ga. Shipper receives, at its Springdale plant from Atlanta about 150,000 pounds of TL shipments and between 2,500 and 4,000 pounds of LTL shipments twice a month. The Blytheville volume is less than this. | Gardner and Jones. | Shipper wants a direct single-line service. It expresses a need for the proposed second-day service from Birmingham and Atlanta. Shipments of container cement require protective service at temperatures below 45 degrees Fahrenheit. Shipper's Chicago supplier has opened a new plant at Atlanta and wants to repair shipper from this point. The shipments from this Atlanta facility were handled by Gardner and Jones in interline service. Shipper was not satisfied with the 5- and 6-day service including weekends. | Jones. Shipper has used Jones' service and therefore it is good. This carrier has provided protective service. |
| 10. (1293) New Brunswick Rubber Company, Chicago, Ill. Rubber-synthetic yarn. Rubber-synthetic textile. | Inbound from Atlanta, Ga. to shipper's mills at Fayetteville, Huntersville and Silcam Springs, Ark. Shipments are received two or three times a week. Outbound shipments both from Fayetteville and Huntersville two or three times a week to Atlanta and Birmingham, Ala. The shipments weigh between 150 and 400 pounds. | Bowman, Gardner, Campbell, and Jones. Shipper uses Bowman interlining with Jones from Atlanta and Birmingham. | Shipper wants single-line, or next-day service between its three principal mills, on the one hand, and, on the other, Atlanta and Birmingham. It does not receive single-line service between these points. Transit time is important because shipper has production schedules to meet. It obtains between 5 and 7 days for delivery. | Jones. Shipper indicates that the service involving Bowman interlining with Jones is not satisfactory. |
| 11. (1294) Cunningham Company, Jacksonville, Fla. Golf and fishing equipment. | From Fayetteville, Ark. through the Atlanta, Ga. and Birmingham, Ala. gateways shipper has agreements to 93 points in Alabama, 84 points in Georgia, 118 in Florida, 25 points in South Carolina, and 16 points in North Carolina. It has daily all shipments of 500 to 2,000 pounds on tag from Fayetteville, Ark. to or through Birmingham and Atlanta. Eighty percent of this traffic is handled by two or more carriers. | Jones handles shipper's traffic on an interline basis with unspecified carriers. | Shipper wants direct, single-line service to Birmingham and Atlanta. It allows 6 days for delivery with the existing service. Jones proposal of second-day service would meet shipper's needs. Shipper has experienced difficulties with tracing. | Jones. |

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Summary of evidence of supporting shippers—continued

CASE NO.—continued

| Shipper, location and commodities | Origins, destination, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and reasons |
|---|---|---|---|---|
| 8. (1071) Lander and Pine Bluff, Ark. | Use shipper under Texas handling. | | | |
| 9. (1111) Du Bois Piano Company, Cincinnati, Ohio. Pianos, organs and accessories | From shipper's Fayetteville and Conway, Ark. and Greenwood, Miss. plants to Atlanta, Ga. and Birmingham, Ala. These shipments average 1,000 and 2,000 pounds. During 1948 shipper had movements from Greenwood, Conway, and Fayetteville to Atlanta, Athens, Dublin, Macon, Savannah, Augusta, and Thomaston, Ga., Greenville, Columbia, Spartanburg, and Charleston, S.C., all named points in Florida and Birmingham, Ala. One-third of the 1948 Greenwood tonnage moved on private carriage. | Campbell interlining with Georgia Highway at Birmingham, Ala., is used from Greenwood to and through Atlanta to South Atlantic and on movements to Florida. Campbell interlining with Pearson at Birmingham, has also been used to Florida from Fayetteville, Conway, Walt and ABF interline with Gardner at Memphis, Tenn. From Greenwood, Taylor interlining T.I.M.E. at Memphis, Tenn. is used. Gardner-Georgia-line service from Greenwood to Atlanta has been used. Roadway is also used from Greenwood. | Transit time is important because dealers do not stock all of shippers models. Also, customers delivery must be made as scheduled or purchasers bonds will be forfeited. Since the dealers do not have loading docks, shipper requires that the vehicles used be equipped with hydraulic tailgates. Jones has refused to accept shipper's interline traffic to Florida. Shipper received complaints on the transit times of two shipments to Atlanta and Florida, respectively. The Atlanta dealer requested that Treadway not be used again. From the origin points to South Carolina, shipper allows 5 to 7 days for delivery. From Greenwood to Georgia it allows 4 to 5 days, and to Florida it allows 10 days. Shipper wants 2-day service from Conway and Fayetteville to Atlanta, overnight service from Greenwood to Atlanta, 4-day service to northern Florida, and 5-day service to southern Florida. To South Carolina, shipper wants 3- or 4-day service from Fayetteville, Conway, and Greenwood. To Birmingham shipper wants overnight service from Conway and Greenwood and 2-day service from Fayetteville. Shipper interviewed a study of 74 shipments from the three origin points to Atlanta. Transit time were given on which six of the shipments. | Bowman and Jones. Shipper has used the services of Jones and has found them satisfactory. Does service Fayetteville, Conway and Greenwood its service to Memphis is described as satisfactory. Also, Campbell's service to Birmingham has been satisfactory. Applicants have indicated that they would use modern equipped with power tailgates in the proposed service. |
| 10. (1217) Fort Smith, Ark. | Use shipper under Texas handling. | | | |
| 11. (948) Little Rock, Texarkana and other points in Arkansas | Use shipper under Texas handling. | | | |
| 12. (1291) Western Auto Stores El Dorado, Ark. general merchandise | Inbound to El Dorado, shipments are received from Chicago, Ill., Kansas City, and St. Louis, Mo., Texas and Oklahoma City, Okla., Dallas and Fort Worth, Tex., and Memphis, Tenn. | Red Ball, ABF, and Atlas. | Time in transit is important to maintain lower inventory. Shipper prefers single-line service, particularly on Powell-Bowman lines, to reduce damage. | Bowman and Jones. |
| 13. (1296) ABF Cycle Division of American 6 Foundry, Inc., Little Rock, Ark. Bicycles | From Little Rock during June 1948, shipper had 70 movements weighing a total of 45,901 pounds, with the average shipment weighing 600 pounds, to specified points in Memphis, Alabama, North Carolina, Florida and South Carolina. | Jones, Gardner interlining with Georgia Highway, Watson, Dalrymple, Bell, Johnson and Bell, Mercury, Gardner, Best interlining with STUART or Central; Mercury interlining with Southeastern, Ryder or Alabama Highway and Daggett, and Campbell interlining with Howard Bell. | Believe third-morning delivery to northern Florida and fourth-morning service to Miami and to North and South Carolina. Desires next-day service to Atlanta and Birmingham. Transit study indicates 5-10 day service to Florida. Two average 10 days and approximately 7 days service to Carolinas. | Bowman and Jones. |
| 14. (1229) Texarkana Chamber of Commerce, Texarkana, Ark.-Tex. | | | Will support all applications for service to Texarkana because of general growth of business. | Jones, Bowman and Strickland. |

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Summary of the names of supporting shippers--continued

ABRAMS, --continued

| Shipper, location and commodities | Origins, destinations, routes, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and reserve |
|---|---|---|---|---|
| 18. (18A) Kenney Corporation, El Dorado, Ark. Oil tanks & traffic consultant for Bindmart Lbr Co. Processing Mfg Co., Great Lakes Chemica Co., Dixon Lumber Co., Pine Lumber Co., Ward Davis Lumber Co., and Ocean Petroleum Co., all of which are located in Texarkana on the El Dorado area. (a) Blackard Printing Ink (b) Pensacola Light Fixtures (c) Great Atlantic Trailer (d) Dixon Lumber pallets (e) Ward Davis pallets (f) Ocean Petroleum petroleum and petroleum prod | (a) From El Dorado to specified points in Georgia, Missouri, Tennessee, Alabama and Florida, twice weekly shipment averages from .2 to .25 pounds. (b) From El Dorado to specified points in Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, and Iowa. Shipper's exhibit for period May 15, through October 1, 1965 indicates total volume of 51,957 pounds, the preponderance of which moved to Missouri and Kansas. (c) From El Dorado to points in Alabama, Georgia, and the Carolinas, twice weekly with shipments ranging from 1,000 to 15,000 pounds; 5+1,000 pounds weekly to Chicago, Ill., 100,000 pounds weekly to St. Louis, Mo., 50,000 pounds weekly to Oklahoma City, Okla., 50,000 pounds weekly to Tulsa, and 25,000 pounds weekly to Springfield, Mo. (d) From El Dorado to Atlanta, Ga., three times monthly, and to specified points in Missouri, Illinois, Oklahoma and Florida, twice monthly. Average shipment weight between 25,000 and 30,000 pounds. (e) From Texarkana, Ark., to Kansas City, Mo., and points in Iowa, twice monthly at 30,000 to 50,000 pounds a shipment. (f) From Texarkana, Ark., 40,000 to 80,000 pounds monthly to Georgia; 240,000 pounds monthly to Florida; "FL quantities" twice monthly to the Carolinas; 40,000 pounds monthly each to Chicago, Ill., Kansas City and St. Louis, Mo., 30,000 pounds monthly to specified points in Missouri and Alabama. | Red Ball, Atlas, Harris Arkansas-Best | Currently uses three-line service to Iowa and Illinois and complains of slow transit times, damage in loading, and tracing difficulties. Desires direct service to Atlanta and Birmingham. Wants 2-day service. The six Arkansas companies basically wish to eliminate intermediate service so much as possible to avoid delays in transit. | Jones, Brooks and Strickland |
| 19. (19a) Bestwall Manufacturing Company Russellville, Ark paving waters | From Russellville, shipper has 175 movements to Birmingham, Ala. and Atlanta, Ga. Also to points in North Carolina, South Carolina, Alabama, Florida, and Georgia. | Brown, Ryder, Georgia Highway (delivering carriers) Mercury, Jones, Red Ball, Carter Truck Line, and Henry Truck Line (originating carriers). | Consistency of transit times is important to meet installation schedules. Accordingly, shipper desires to eliminate three-line hauls and limit two-line hauls. Wants second-day service to Atlanta and Birmingham. Shipments to Florida currently move through Memphis gateway, but shipper would utilize Atlanta more often if it could rely on consistent two-day service to Atlanta. | Jones |
| 20. (20a) Carpets, Tile Little Rock, Ark Carpets padding and drapes (b) U.F. Jones Construction Company Little Rock, Ark construction supplies | (a) From Birmingham, Ala., and Atlanta, Ga., and points in Massachusetts, Tennessee and Pennsylvania to Little Rock, Ark. Shipper receives construction materials and supplies four times a year with each load weighing between 200 and 600 pounds. (b) From points in Pennsylvania, Georgia, Tennessee, and New York, N.Y., Dallas, Tex., Lawrence, Mass., and Anderson, S.C. to Little Rock. From 6/11/65 to 9/10/65, shipper received 42 shipments averaging 1,000 pounds each. | Universal, Pennsylvania, Ryder Trucking Co. Assn., CTHC, Southern, T.I.M.E., Daggett, Jones, Wilson, C.S.T., Gardner, T.I.M.E., CTHC, Atlas, Campbell, Harris. | Wants single-line service for less delays. Transit time from Pennsylvania are from 5 to 14 days, from Georgia 3 to 10 days, from Massachusetts 13 days and from Tennessee 2 to 7 days, all including unknown Waste Removal service on traffic from Georgia, Tennessee, and Pennsylvania. | Jones and Brooks. Jones proposal would not give shipper a single-line service. |
| 21. (20b) Acme Linoleum and Tile Co., Inc. Little Rock, Ark rugs, carpets fabrics, and tile | From points in Pennsylvania, Georgia, North Carolina, South Carolina, Florida, New Jersey, and New York to Little Rock. From 12/1/64 to 8/1/65 shipper transported 91 shipments. Their average weight was 370 pounds. | Acme, Georgia Highway Consolidated, CTHC, P&E, Wilson, CTHC, Atlas, Gardner, Mercury, Superior, T.I.M.E., ABF, Bowman, Ryder, Broadway, Tarnower, Bullock. | Wants faster more consistent time-in-transit. Average transit time is 1 to 7 days, including weekends. Needs 2-day service from points in Alabama, Georgia, and Tennessee and the Carolinas, 3-day service from New York and Pennsylvania points. Wants proposed next-day service from Atlanta. | Jones and Brooks. |
| 22. (20c) Tri State Mill Supply Co. Shreveport, Ark. Mine parts, machine equipment, and industrial supplies | From Atlanta, Ga., Birmingham, Ala., Dallas, Houston, San Antonio, and Fort Worth, Tex., and Greenville, Miss., to Crossett. Shipper receives between 40 and 60 shipments a month with the shipments averaging between 300 and 500 pounds. | Watson, ABF, Eastern, Spector, P&L, Red Ball, Bad Line | Wants faster service. Prefers single-line service. Roadway selected freight bills show average transit time of between 4 and 5 days. Only a few transit times given. Needs 2-day service from Atlanta and from Birmingham 3-day service. | Strickland, Jones, and Brooks Shipper has not tried the services of several existing carriers. Shipper states it is getting good service from Dallas. |





Summary of the names of supporting shippers--continued

Abrams, --continued

| Shipper, location and commodities | Origins, destinations, routes, type and frequency of traffic | Existing service utilized | Reasons for support of application | Application supported and reserve |
|---|---|---|---|---|
| 1. (21a) Kenney Corporation, El Dorado, Ark. Oil tanks & traffic consultant for Bindmart Lbr Co. Processing Mfg Co., Great Lakes Chemica Co., Dixon Lumber Co., Pine Lumber Co., Ward Davis Lumber Co., and Ocean Petroleum Co., all of which are located in Texarkana on the El Dorado area. (a) Blackard Printing Ink (b) Pensacola Light Fixtures (c) Great Atlantic Trailer (d) Dixon Lumber pallets (e) Ward Davis pallets (f) Ocean Petroleum petroleum and petroleum prod | From El Dorado to specified points in Georgia, Missouri, Tennessee, Alabama and Florida, twice weekly shipment averages from .2 to .25 pounds. From El Dorado to specified points in Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, and Iowa. Shipper's exhibit for period May 15, through October 1, 1965 indicates total volume of 51,957 pounds, the preponderance of which moved to Missouri and Kansas. From El Dorado to points in Alabama, Georgia, and the Carolinas, twice weekly with shipments ranging from 1,000 to 15,000 pounds; 5+1,000 pounds weekly to Chicago, Ill., 100,000 pounds weekly to St. Louis, Mo., 50,000 pounds weekly to Oklahoma City, Okla., 50,000 pounds weekly to Tulsa, and 25,000 pounds weekly to Springfield, Mo. From El Dorado to Atlanta, Ga., three times monthly, and to specified points in Missouri, Illinois, Oklahoma and Florida, twice monthly. Average shipment weight between 25,000 and 30,000 pounds. From Texarkana, Ark., to Kansas City, Mo., and points in Iowa, twice monthly at 30,000 to 50,000 pounds a shipment. From Texarkana, Ark., 40,000 to 80,000 pounds monthly to Georgia; 240,000 pounds monthly to Florida; "FL quantities" twice monthly to the Carolinas; 40,000 pounds monthly each to Chicago, Ill., Kansas City and St. Louis, Mo., 30,000 pounds monthly to specified points in Missouri and Alabama. | Red Ball, Atlas, Harris Arkansas-Best | Currently uses three-line service to Iowa and Illinois and complains of slow transit times, damage in loading, and tracing difficulties. Desires direct service to Atlanta and Birmingham. Wants 2-day service. The six Arkansas companies basically wish to eliminate intermediate service so much as possible to avoid delays in transit. | Jones, Brooks and Strickland |
| 2. (21b) Weiner Lumber and Lumber, Hamburg, Ark. lumber products | From Texarkana, Tex., points in Mississippi, Atlanta, Ga., and points in South Carolina to Hamburg. No middle figures presented | Red Line | Wants better single-line service. | Strickland |
| 3. (21c) W. Shoemaker and Sons, Inc., Magnolia, Ark. cotton piece goods | From points in North Carolina, South Carolina, Alabama, and Mississippi to Magnolia. Receives between 10 and 20 shipments each month, weighing from 2,000 to 5,000 pounds. | Jonesville, Dixie, Red Ball | Wants consistent service. Average transit time is 6 days, including weekends. Wants 4-day service. Also wants proposed 2-day service from Atlanta. | Strickland |
| 23. (21) J.A. Wear Co., El Dorado, Ark. general merchandise | From points in Georgia, North Carolina, South Carolina, and Alabama to El Dorado. Weights range from 100 to 500 pounds. Received 24 shipments from 3-22 through 6-11 | T.I.M.E., Atlas, (CTHC, Powell, Ryder, Jordan), and carrier. | Wants faster more consistent service. Wants proposed 2-day service from Atlanta and Birmingham to El Dorado. | Strickland. Shipper does not route all shipments |
| 24. (21d) Walker-McKay Co., Texarkana, Ark. dry goods. | Inbound from points in Alabama, Georgia, North Carolina, South Carolina and Virginia and from Texarkana, to points in Arkansas, Texas, and Oklahoma. Between July and September, 1965 shipper received 2 shipments from Alabama totaling 7,232 pounds, average weight a shipment 2,116 pounds. From North Carolina during same period shipper received a total of 17,897 pounds, each shipment averaging 2,116 pounds. From South Carolina (same period) 1,848 pounds averaging 617 pounds a shipment. Outbound daily shipments move to Oklahoma average between 250 and 400 pounds. (Specific tonnage for other points not given). | East Texas, Arkansas-Best, and Red Ball. Texarkana-Ft. Smith and Interstate are used at Texarkana. Also, number of cars are turns been used to originate traffic at the East | Wants 3 day service from points in Alabama, Georgia, Virginia, and the Carolinas, and wants 2-day service to Oklahoma points. Average transit time from Georgia and the Carolina points is 4.4 days. From Virginia average transit time is 6.0 days. (Average transit time from other points not given.) | Brooks and Jones. Transit study does not include all shipments which moved during the period in question. No specific complaint about existing services. |
| 25. (21f) Texarkana Grocers | See shipper under Texas heading. | | | |
| 26. (21g) Forest Hay Company, Inc., Corsicana, Ark. Hays and peables. | From Conway between 1/17/65 and 11/17/65, a total of 75 shipments were moved to Birmingham, Huntsville, Lorrance, Montgomery, and Tuscumbia, Ala.; points in Georgia, including Atlanta; to 24 points in Florida including Miami, Clearwater, and Petersburg, Fla., Gainesville, Statesville, Charlotte, Burlington, and Goldsboro, N.C.; Bristol, Lynchburg, and Roanoke, Va., Baltimore and Frederick, Md., Parkersburg and Charleston, W. Va., eight points in New York, New Bedford and Fall River, Mass., Hyannisville, Ky., Altoona, and Johnstown, Pa., and Charleston and West Columbia, S.C. The traffic is CTL. | Arkansas-Best and Red Ball originate the traffic and interline at Little Rock or Memphis | Shipper is not satisfied with the service to the involved destination points. Complaints are received daily during shippers busy season. It allows 7 days for delivery to Atlanta and Birmingham and 10 days to other points in Georgia and Alabama and to points in New York, Pennsylvania, and Florida. | Brooks and Jones. |
| 27. (21h) Bancroft Industries, Inc., Calvert, Ark. farm, caps and clothing | From Calvert to points in the United States. Representative States are: Pennsylvania, The Carolinas, Alabama, Georgia, Florida, New York, New Jersey, Maryland, Tennessee, and Utah. About 45,000 moves annually | Powell, Superior, Jones, Gardner, T.I.M.E., and Texas cap in joint-line service through either the Little Rock or Memphis gateway. | Needs faster service, as a government contractor it is subject to penalties for late delivery. Needs a two-line service as opposed to the present three-line movement. Presently allowing 5 days and time to Atlanta, 3 to 4 days to other points in Georgia, 5 days to Florida, 6 to 7 days to points in Maryland, and 9 to 10 days to New York. | Brooks and Brooker. The requested authority would only give shipper a two-line service to Atlanta. Service to the other destination points would continue to be three-line hauls. It appears that shipper has two-line service to all involved destination points, but is not satisfied with the service of these presumed carriers. |
| 28. (21i) Steele Casing Company, Springdale, Ark. tapered floats | From shipper's plants in Springdale, Lowell, and Fort Smith, Ark., and Tulsa, Shipper, and Henryville, Ind., to Atlanta, Ga., Birmingham, Ala., and points in North Carolina, and South Carolina. Approximately 920,000 pounds, 801,000 pounds, 140,000 pounds and 4000 pounds shipped to representative destination States during first 9 months of 1965. All are TL shipments. | Tennessee, Paddish, Jones, and private carriage | Shipper wants to eliminate use of private carriage in destination area. | Jones. Shipper is presently using the service of U.S. Roadline Transportation, a motor contract carrier to the involved states, without complaint. |
| 29. (21j) Spotlight Co., Inc., Allentown, Pa. ladies lingerie | From Akron, Alabamaville, and Collins, M.C., to its plant at Ashburn, Ga. From Ashburn, Ark., to points in Alabama, Georgia, Florida, Mississippi, North Carolina, and South Carolina. Inbound annual volume is about 500,000 pounds. Outbound annual volume is about 200,000 pounds. | Broadway, ALT, Arkansas-Best, and Service-Line. | Joint-line service inadequate. Wants faster service. Presently allowing 10 days tran time. | Strickland |

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Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 50. (709) Georgia Pacific Corp., Transport. Div., Plainfield, Ark. Paper and paper products. | From Crossett, Ark. points in Alabama, Georgia, Florida, North Carolina, and Tennessee. Shipments range between 20 and 40,000 pounds. | Ted Bell, Arkansas-Best, Red Line, Jones, Thurston, Warner Smith, Ellis, Brewer, East Texas, Shields, Inherior, Cobb-Vickery. | Shipper wants to eliminate private carriage to Florida. Wants truck-serving service to northern Florida and fourth-morning service to southern Florida. | Brewer and Jones |
| 51. (710) Harry G. Barr Company, Fort Smith, Ark. Aluminum extrusions | From Harvard Tree to points in Alabama and Georgia. Approximately 300,000 pounds moves annually. | Pyeatt, East Texas, Jordache, Jack Cole, Norman, Alabama Highway, T.I.M.E., Jones. | Joint-line service inadequate. Shipper states that Alabama Highway and Campbell have refused its freight. Shipper noted a complaint by one of its Florida customers against Ryder. | Jones |
| 52. (711) Gulf Outdoor Lamp, Inc., Magnolia, Ark. Clothing. | From Magnolia, to Chicago, Ill., Atlanta, Ga., Birmingham, Ala., Kansas City, Mo., and Dallas, Tex., and return. Shipments range between 50 and 300,000 pounds. | Southwestern, Red Ball, East Texas, Jones, Stringfellow, ABF, Campbell, Floyd L Beasley, Gardner, ETSWBC, Cole, and Roadway | Joint-line service inadequate. Wants second or third day service to and from Chicago, and second-day service to and from Atlanta, and Birmingham. | Jones |
| 53. (712) Home Supply Company, Hamburg, Ark. Furniture, and carpets, stoves. | From Atlanta and Dalton, Ga., Roanoke, Virginia, and Dallas, Houston, and Mart, Tex., to Hamburg. Between 10 and 15 shipments monthly, ranging between 150 and 400 pounds. | Red Line, Arkansas-Best, and Missouri Pacific railroad. | Needs faster service. Wants second-morning service | Strickland. |
| 54. (679) Sun Lighting, Inc., El Dorado, Ark. Lighting fixtures | From El Dorado to Atlanta, Ga., Birmingham, Ala., Dallas, Tex.; Baltimore, Md., Tulsa, and Oklahoma City, Okla.; St. Louis, and Kansas City, Mo., and points in New York. Weekly shipments range between 100 pounds and 500 pounds | A.B.F., Atlas, Campbell 66, Transcon, Pac Bell, Morris. | Wants faster transit service. Presently allowing 5 days load time to Oklahoma City, 4-days to Kansas City, between 4 and 5 days to Atlanta and Birmingham, 4 days to New York, and third-morning to Dallas. | Brewer, Jones. Shipper states that because of customer complaints it has discontinued the use of A.B.F. to Kansas in favor of joint-line service |
| 55. (679) Greater El Dorado Committee, El Dorado, Ark. | From and to El Dorado. | Red Ball, Morris, Arkansas-Best, Atlas. | Interested in additional transportation services. | Jones. Interstate Atlas, and Arkansas-Best, serves El Dorado in single-line service to many points. |
| 56. (681) Daisy Manufacturing Co. Rogers, Ark. Air rifles, B.B. shot and toy guns. | From Rogers to Atlanta, Ga., and Birmingham, Ala. About 1 million pounds and 500,000 pounds moves respectively to each point. | Campbell, Jones, Ryder, Red Ball, Central. | Wants faster service. | Jones. Shipper is dissatisfied with Campbell's single-line service to Birmingham because transit time. Other joint-line service too slow. |
| 57. (685) Arkansas Ivory Handle Co., Magnet, Ark. Wooden handles. | From Hope to points in Alabama, Florida, Mississippi, North Carolina, and South Carolina. About 400,000 pounds moves annually. | Strickland, interlining with other unnamed connecting carriers. | Joint-line service inadequate. Wants better 1 and 2-days service. Presently allows between 4 and 10 days load time. | Strickland. |
| 58. (686) (a) Prince Poultry, Inc., (b) Prince Manufacturing Co. (c) Tom Watch & Food Mills, Inc., (d) Lincoln Tag, Inc., all S.E. Prince Co., all of Lincoln, Ark. Eggs, Chrome, Poultry Builders and supplement, produce, eggs and feed. | From Birmingham, Ala., and Lockland, Ga., to Lincoln. Annually, approx. 1.1 million and 18,312 pounds moves from respective cities. | Jones, Ryder, and Alabama-Georgia. | Joint-line service inadequate. Wants 2-day service. Most time allow 10 days to 2 weeks load time. | Jones. |
| 59. (710) American Greeting Corp., Osceola, Ark. Greeting cards and related items. | From Osceola, Ark. to points in Alabama, Georgia, Florida, North Carolina, and South Carolina. About 15 million pounds moves annually in 7% and 17% shipments. | Gardner, Campbell, ETSWBC, Superior, Arkansas-Best, R.E.T. | Wants 2% slng.e-line service to destination States. | Jones. Shipper states that Ryder can serve it in single-line service but this carrier is not interested in the traffic. Traffic seasonal needs expedited delivery. |
| 60. (711) Crossett | See shipper under Missouri heading. | | | |

114 M.C.C.





Summary of evidence of supporting shippers—Continued

ARKANSAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 61. (713) Kinden Mfg Co. Rector, Ark. Aircraft and missile parts. | From Rector to Marietta, Ga. (four shipments a week totaling between +,700 and 5,400 pounds and Birmingham, Ala. (one to 100 pounds a week.) | Cottonwestern, Arkansas Best cannot give daily pickup). Transcon (by interlining with Jones). | Present service too slow. Jones offers overnight service to Birmingham and Atlanta. Average transit time between 3 and 5 days. Wants proposed overnight service to Atlanta and Birmingham. | Jones. If authority is granted, if Jones could not deliver commodity from Rector to Marietta, in single-line service, it would have to interline at Atlanta. Jones |
| 62. (715) Harry G. Barr Company, Fort Smith, Ark. Aluminum extrusions | From Atlanta, Ga. and Birmingham, Ala. to Fort Smith. Atlanta to Ft. Smith one shipment every 6 weeks weighing 3,000 pounds. Birmingham to Ft. Smith once every 6 weeks weighing between 700 and 1,000 pounds. Not presently shipping outbound from Ft. Smith. | Gardner, Campbell, Mercury | Wants faster service. | |
| 63. (717) Cal-Gas, Incorporated, Inc. Little Rock, Ark. Tubular housewares. | Inbound, from points in North Carolina, South Carolina, and Alabama, to Little Rock. Shipper receives over 100,000 pounds a year. Outbound, from Little Rock, to points in the Southeastern States. Ships in excess of 1,000,000 pounds a year. | Inbound, ET & WNC and Campbell. Outbound, T.I.M.E., Gardner, Campbell, ABF, ET & WNC, Ryder, Mercury, Thurston, Brewer, Central. | Wants faster deliveries and smaller truckig of shipments. Allows 7 to 10 days load time from to Florida, 5 to 7 days to the Carolinas, and 3 to 5 days to Georgia and Alabama. | Brewer, Jones and Red Ball. T.I.M.E., Gardner, and Thurston offer direct service to Atlanta, Ga. Gardner and Campbell offer direct service to Birmingham and Decatur, Ala. T.I.M.E. offers direct line service to Atlanta, Ga. |
| 64. (718) Tiros Manufacturing Corporation, Conway, Ark. School furniture. | From Conway to points in North Carolina, South Carolina, Georgia, Florida, Alabama, and Tennessee. Shipper transports approximately 81,000 to 70,000 pounds a month. Shipments weigh from 100 to 3,700 pounds with an average weight of 800 pounds. | Wait interchanging with ET & WNC, T.I.M.E., Central, Overnight, Yancey, Thurston, Ryder, Georgia Highway, Carolina Freight, M & O, Atlas, Roadway. | Desires joint-line service of Wait from Conway to Little Rock and Brewer from Little Rock to points in southeastern States. Supports Jones to Atlanta, Ga. and Birmingham, Ala. Allows load time from Conway to Florida points of 7 to 12 days; Atlanta 3 to 5 days, Eastern Seaboard, 5 to 8 days, Texas 3 to 5 days service to Florida and 3 days to all other areas. | Brewer and Jones. 1 Ease Texas offer direct service from Little Rock to Birmingham and Atlanta. Ryder serves points in Florida from Little Rock through the Memphis gateway. |
| 65. (719) Chamberlin School Furniture Inc., Conway, Ark. School Furniture. | From Conway LTL shipments to points in Alabama (30,000 pounds a year), Georgia (360,000 pounds a year), Florida (30,000 pounds a year), South Carolina, New York and New Jersey (private carriage 50,000 pounds some TL), North Carolina (200,000 pounds handled in private equipment and some LTL). | Wait to Little Rock and interline with ET & WNC, T.I.M.E., Superior, R.D., Control, Springmeier, Atlas, Brewer, Florida, Wall. | Wants single-line service from Conway as it does not have to use its own equipment. Prefers joint-line service now slow. Allows load time of 7 to 10 days to the points in the northeast, 7 to 10-days to Florida and 4 to 5-days to points in the Southwest. Needs 3 to 4-day service to all points. | Brewer and Jones. Presently shipping 60 percent of its volume by private carriage 25-act service available from Conway to Memphis gateway, which shipper didn't know about. Memphis can also serve direct from Conway to Memphis. |
| 66. (720) Greenville Stealing Company, Greenville, Ark. Black walnut kernels, ground walnut shells, metal containers and paper bags. | Inbound, Mobile Ala to Greenville (125,000 pounds a year). Outbound, Greenville to Glen., Fla. (10,000 pounds every 4 weeks to 7½ lots). | Jones, Campbell, Ryder Conrad. | Wants faster service. Wants 2-day service between Atlanta and Greenville and between Atlanta and Mobile. | Jones. Shipper is satisfied with Ryder's service. See shipper under Missouri heading. Also, 19, 1711. |
| 67. (721) Brown's Aluminum Irrigation Company, Fayetteville, Ark. Irrigation motors and pumps. | From Atlanta to Springdale, Ark. No figures given as to volume or frequencies. | Transcon. | Wants faster service. | Jones. |
| 68. (722) Carpet Land Springdale, Ark. Carpets and padding. | From Atlanta, Ga. and Birmingham, Ala. to Springdale. Receives 5,000 pounds of LTL shipments a month from Atlanta and the same from Birmingham. | Jones from Dalton, Georgia Highway, Campbell, Red Ball, ET & WNC, T.I.M.E. | Transit time important because shipper's stores is small and it cannot maintain a large inventory. Wants faster service. Average transit time from Georgia is 8.3 days including weekends. Wants 2-day service from Birmingham and Atlanta to Springdale | Jones. Shipper wants a one-line haul to place of a terminal haul. However a two-line haul is presently available to shipper with Ryder-Jones. |
| 69. (723) The Grapette Company, Inc. Camden, Ark. Concentrates and dry chemicals. | From Camden to points in North Carolina, South Carolina, Florida, Tennessee, Alabama, Virginia, Maryland, Georgia, New York, and New Jersey and to Washington, D.C. ships approximately 3% shipments a month to the above States. Shipments average 400 pounds. Also receives grape juice from New York, and orange juice from Florida (15 shipments a month weighing 10,000 pounds). | Southwestern, interlining with ETSWBC, Overnight, Gardner, Thurston, Rutherford, Central, Preston, Bell, Gall, and Ryder, Railroads & T.I.M.E. on inbound shipments. | Complaints of undue delays in transit with the available joint-line service. Single-line service would eliminate damage. Allowing 5 to 7 days load time on shipments to Alabama, Tennessee, the Carolinas, Florida, Virginia and Maryland. | Gardner |
| 70. (723) James H. Matthews and Company, Searcy, Ark. Broken cemetary materials | From Searcy to points in Alabama, Florida, Georgia, and Tennessee. Ships 35,000 pounds a month to above States. Each shipments is 17% and weighs less than 100 pounds | Overall interlining with Ryder, Transcon, Duncan, Morris, Landman, Ellsworth, Pulaski, Hoover, ETSW, Wall, South, Robinson, Skyline, Baggett, ETSWBC, Campbell, and Viking. | Supports Brewer from Little Rock, Ark. to points in Southern territory because it wants faster delivery allowing load time to Florida of 5 to 7 days, Georgia, 4 to 5 days, Alabama, 4 to 5 days, and the Carolinas, 5 to 7 days. Needs 2-day service to Georgia and Alabama, and 3-day service to the Carolinas and Florida. | Brewer. Already has numerous two-line service. Shipper kept no record of specific complaints. |

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*Summary of evidence of supporting shippers—Continued*

*ATLANTA—Continued*

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 52. (79W) Kearney Co. Fayetteville, Ark. Electrical switches, fuses and pole line equipment. | From Fayetteville to Atlanta, Ga., Greenville, Miss. and Birmingham, Ala. Ships 1,500 to 4,000 pounds every 2 weeks to Atlanta (LTL) and 500 to 4,000 pounds two times a week to Birmingham. (LTL) Has occasional shipments to Greenville. | Jones, Red Ball, Original. | Two many things with present service. Wants second-morning service to Atlanta and Birmingham. | Red Ball, Jones. Shipper has no complaints with present service to Greenville (single-line). Campbell offers single-line service to Birmingham. |
| 53. (78W) Democrats Printing and Lithographing Company, Little Rock, Ark. Catalogues, magazines and books. | From Little Rock to points in North Carolina, Florida, Georgia, Alabama, South Carolina, and Virginia. Ships about 3,000 to 10,000 pounds a month to the above areas. Weight may range up to 10,000 pounds. | ABF, Campbell, Jordan, E.T.&T. Hall, Ryder, Thornton, Jones, Tabbs, Stokes, Rochelle, Beeman, Mills, D C Harmers, Overnight, and Central. | Wants faster transit time. Wants second-third-morning service to Florida, and 1- or 2-day service to Alabama and Georgia, and 2- or 3-day service to Virginia and North Carolina. | Beeman, Jones. Jones interlining at Memphis with Beeman, can serve the Carolinas and Alabama. |
| 54. (79I) Tabler Corporation, Rogers, Ark. Prefabricated coverings for plaster. | From Vaps to the Atlanta, Ga. gateway. Ships 2 or 3 times a week about 1,750 pounds a shipment. | Rickey-Little Rock-ETSWC, T.I.&S. Strickland, Memphis, Tennessee. | Allows 7 to 10 days load time supports 3-day service to Atlanta with Strickland. | Strickland. If application were granted, would still be a 3-line haul. Likes Strickland's service. |
| 55. (79) National plastic products, Fort Smith, Ark. Molded shades and desks. | From Fort Smith to Birmingham, Ala. Ships 30,000 and 50,000 pounds a week to Birmingham. | Gardner, Jones, Cole. | Wants the consolidation of a single-line service. Has complaints with Cole's service. Wants faster deliveries. Wants second-morning service to Birmingham. | Jones. Shipper dissatisfied with Jones interchanging with Cole, but there are 3 other carriers Jones can interchange with that have been untried. |
| 56. (79) Dodge Jones Company, Inc. Silver Springs, Ark. Plastic pipe and fittings. | From Silver Springs to points in Alabama and Georgia. Shipped 95,000 to 100,000 pounds to above areas in 1960. Expects to ship 500,000 pounds in 1961. The traffic is LTL. Average weigh of each shipment is between 3,500 and 5,000 pounds. | Rubin, Gardner, Jones, Campbell, Ark-Best. | Wants faster transit time and single-line service. Wants 3-day service to Atlanta and Birmingham. | Jones. |
| 56. (79) Sterling Stores Co., Inc. and Clark Wholesale Co., Inc. Little Rock, Ark. General merchandise. | From points in New Jersey, North Carolina, South Carolina, Georgia, and Tennessee to Little Rock. | Rockingham Interlining with T.I.&S., Thornton-PIE, Atlas, G.R.S., Campbell, ETSWC, Old Dominion, Akins, Federal, Rice, Hervey, Brantley, Overnite, WFL, Ryder, Tennessee, Carterville. | Wants faster transit time. Wants single-line service to avoid trucking problems. Average transit time about 6 days including weekends. Wants proposed 3-day service. | Beeman. Uses private carriage Jones' service from Memphis is good. |
| 57. (79) Varian Stores Huntsville, Ark. General merchandise. | From the Atlanta, Ga. and Birmingham, Ala gateways to shipping stores located at Huntsville, Springfield, Silver Springs, and Rogers, Ark. All shipments are LTL averaging about 500 pounds. | Jones, ABF, Campbell, Red Ball, Overnite, T.I.&S. Ga. N'way, Varian, RRA, Thornton, Ryder, ITT, CRL, Gardner, Garland, Harper, Hervey, Cope, Thurston, Rochelle, Ozark, Tenn., ETSWC, WC, Gardner, Akins, Rubin, Strickland, Baggett, Wade, R.C.W. and Highway. | Wants less in-transit. Average transit time about 5 days. | Jones. Shipper has not explored the service of any of its origin carriers. |
| 58. (79II) Flint Truck Line, Fort Smith, Ark. Automobile freight. | From Fort Smith to Atlanta, Ga. and Birmingham, Ala. Load lengths. Ships 500 and 1,000 pounds handled to above points and beyond each day. | Overnite, Campbell, Hervey, ABF, Jones. | Wants to interline directly with Jones. Presently getting inconvenient second-day service. Wide convenient 2-day service to Atlanta and Birmingham. | Jones. |
| 59. (79W) Standard Register Company, Fayetteville, Ark. Perforated forms and paper. | From Fayetteville to points in Florida. Shipped 81,778 pounds to Florida during 1960. | Jones, Campbell, Ryder, and Tennessee Hall, Central, Tatlock, Red Ball, Trentwood. | Jones would give shipper 2-day service to Atlanta gateway. Wants single-line service to Atlanta. Average transit time 7.2 days including weekends, allowing 4 days load time to Atlanta. | Jones. Shipper has a wide choice of entering southern through many gateways. |
| 60. (79W) Allen Lumber Company, Silver Springs, Ark. Cedar fence posts. | From Silver Springs to Atlanta, Ga. and Birmingham, Ala. Expected to ship 1,000,000 pounds of feed to above points in 1961. Shipped 2,000,000 pounds in 1960. | Overnite. | Intended does not have enough equipment to meet demands. Shipper requires refrigerated service. | Jones. Colorful offers direct service. Shipper called us long as 2 weeks to get equipment from Colorful. Shipper needs about 10 trailers a week. |
| 61. (79L) Ozark Wheel, Silver Springs, Ark. Industrial truck trailer axles. Contract-wheels, brake drums, truck and trailer axle assemblies. | From Montgomery, Ala. to Silver Springs, shipper receives three shipments a year each weighing from 35,000 to 50,000 pounds. From Silver Springs to points in Alabama, Georgia and Florida. Ships in excess of 250,000 pounds a month. | Campbell, Jones, Tennessee, ABF, Beeman, Ryder, Cotton, A.A.A. Rubin and Ark.-Best. | Wants a same direct and a faster service. Wants second-morning service to Atlanta. | Jones. Campbell's route is very circuitous. |





*Summary of evidence of supporting shippers—Continued*

*ATLANTA—Continued*

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 62. (79W) Southern Folder & Index Company, El Dorado, Ark. Files, folders and indexes | From El Dorado to Greenville, Miss.; Atlanta, Ga., and Birmingham, Ala. Ships once a week to Greenville, (100-125 pounds) several shipments a month to Atlanta, (minimum to 4,000 pounds) and ships twice a month to Birmingham (minimum to 2,000 pounds). | Red Ball, Herrin. | Single-line service would avoid trucking problems. Wants overnight service to Greenville and second-day service to Atlanta and Birmingham. | Red Ball |
| 63. (80W) Riverside Furniture Corporation and Twin Rivers Furniture Corporation, both of Fort Smith, Ark. Furniture. | From Fort Smith to Birmingham, Ala., and Atlanta, Ga., TL lots and LTL. Ships between 70,000 and 100,000 pounds a month to above points. | Carrier, and Herrin. | Customer want faster deliveries. Wants second-morning service to Atlanta and Birmingham. | Jones. Jordan appears to have discontinued offering single-line service to this shipper. Herrin is affiliated with Ark-Best Freight but joint-line service and shipper has no specific complaints. |
| 64. (80I) Williams Auto & Industrial Supply, Fort Smith, Ark. Automotive and industrial supplies. | From Atlanta, Ga. and Birmingham, Ala. to Fort Smith (4,000 pounds a month). | Gardner, Hervery, Campbell, Beeman, Hewlin, ETSY, Hofman and T.I.&S. | Average transit time from Birmingham is 10 days including weekends. | Jones. Jordans offers single-line service. Campbell offers single-line service from Birmingham. |
| 65. (80W) Arkansas Wholesale Dry Goods and Variety Store, Inc. Springdale, Ark. Piece goods and clothing | From Atlanta, Ga. and Birmingham, Ala to Springdale, Receives about 300 LTL shipments from Atlanta a year. | Jones, ABF, Campbell, Red Ball, Ryder, Rochelle, T.I.&S., Overnite, ETSY, Thurston, Roadway, Rochelle, Beeman, Hewlin, Gardner, Harper. | Needs fast delivery service on it or sell close-out, before the value of the goods declines. Wants second morning delivery from Atlanta and Birmingham. Average transit time is 4 to 5 days. | Jones. Proposed service would still be interline. Either [illegible] currently specialize with Jones on the delivering carrier. |
| 66. (81W) Martin Company Inc. Springdale, Ark. Piece goods rugs, towels, clothing. | From Atlanta, Ga. and Birmingham, Ala gateways to points in Arkansas. Receives approximately 300 LTL shipments a year. | Jones, ABF, Fat Boy, Roadway, Campbell, Harmery, Waldron, Hewlin, Hervey, Beeman, ETSWC, ETY, Carolina, T.I.&S., YCT, Thurston, Gardner, Stael, GRI, Smith, Overnite, ATW, and Rochelle. | Needs faster delivery so it can have close-out sales at the end of the season. Transit study only represents a small portion of the traffic. Current transit times range from 1 to 9 days. | Jones. |
| 67. (81I) Whitlock Manufacturing Company, Inc. Springdale, Ark. Carton piece goods | From Atlanta, Ga. to Springdale. Receives LTL shipments from Atlanta about twice a month. | T.I.&S., Jones, Roadway, Thurston. | Wants single-line service from Atlanta. Shipper not satisfied with 4 working day service. Wants 3-day service. Average transit time from the Carolinas is 5 days. | Jones. Gateway on most shipments but loss to Memphis. Interline of the application would permit Jones to gateway at Atlanta instead of Memphis. Ryder, Jones carrier described as reasonable. |
| 68. (81I) Retail Grocery Corporation, County, Ark. Vending machines. | From County to points in Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee, Virginia, Maryland, and New Jersey. Ships between 40,000-50,000 pounds LTL to above points a month, weighing between 300 and 8,000 pounds. The average shipment weighs 1,000 pounds. | Hall, ETSWC, Strickland, T.I.&S. Gardner, Red Ball, ABF, Central, GA, GRI, RRR, Rochelle, Tatlock, Overnite, Weiss, Baggett, Tennessee, Fuller, Green, Thurston, Terminal 7., Ryder Hervery and Atlas. | Wants a faster two-line haul rather than existing three-line haul. This would make trucking easier. | Beeman. Beeman proposes service from Little Rock. Shipper would use Hall from County to Little Rock. Several carriers have authority from County Clover to the Memphis gateway. Also several carriers offer two line service from County to Atlanta |
| 69. (81I) Van Buren. | See shipper under Oklahoma heading. | | | |
| 70. (81W) Kimbrell products Corp. Fayetteville, Ark. Copper solder, joint fittings, parts, and pipe connections. | From Fayetteville to Atlanta, Ga., Charlotte, N.C., and Tampa and Fort Lauderdale, Fla. Ships LTL 100,000 pounds a year to Atlanta, 50,000 pounds to Charlotte, 50,000 pounds to Tampa and Fort Lauderdale, and 200,000 pounds a year to points on the east coast. | Jones, Beeman, Ryder, Thurston, Gardner, ETSWC, and Campbell. | Wants second-day delivery to Birmingham and Atlanta. | Jones. Service to Carolinas is presently a two-line haul. If application were approved it would still be a two-line haul. |
| 71. (82I) Lewis Brothers, Fayetteville, Ark. Furniture, appliances and general merchandise. | From Atlanta, Ga. and Birmingham, Ala. gateways to Fayetteville. Receives about 2,000 pounds a year in LTL lots. | Thurston, ETSWC, Tallant, Ryder, Caldwell, CBP-RRR, Gardner, Georgia Highway, Campbell, Jones Standard, S.C. Ala. My Beeman, T.I.&S. Idaho, Tennessee, Weiss. | Wants a single-line service from Atlanta and Birmingham. Average transit time from the Carolinas was 4.5 days including weekends. Memphis 2 days, and 3 days to Georgia. Wants second-morning service from Atlanta and Birmingham to Fayetteville. | Jones. Jones uses Memphis and currently offer the proposed two-line service |
| 72. (82T) Fayetteville, Ark. | See shipper under Oklahoma heading. | | | |
| 73. (83R) Magnolia, Ark. | See shipper under Oklahoma heading. | | | |
| 74. (82I) The Harley Company, Camden, Ark. | From Camden to New York, N.Y. During 1960, shipper transported 119,400 pounds to New York. Average shipments weighs 2,387 to 2,988 pounds. | Atlas, Interstate, and Powell. | Wants a faster delivery service. Allows load time of 4 to 5 days from Camden to New York. | Beeman. Witness states that he is satisfied with existing service but would prefer a single-line service. |

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Summary of evidence of supporting shippers—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 75. (83+) Rogers Hardware & Lumber Company, Atmore, Ala. Lumber and garage doors. | From Atlanta, Ga. to Atmore, and from Wilmington, Fla. to Atmore. Receives about eight LTL shipments a month from the above points. | ETSI, ..ons, Ryder, and Campbell. | Because of competitive reasons, [illegible] needs quick transit. Wants 1-day service from Atlanta. Transit time was shown to be between 2 and 4 days from Atlanta to Little Rock where shipments are re-routed for delivery to Atmore. | Jones. Witness admitted present service was adequate. |
| 76. (84) Fort Smith Seed & Bean Co., Fort Smith, Ark. Beans and soybeans. | From Tifton, Ga. to Fort Smith (5,000 pounds every 5 to 6 weeks). From Conyers, Ga. to Fort Smith (one shipment every 4 to 6 weeks ranging 2,000 pounds). Shipper states it would receive 4,000 pounds every 2 weeks from Miami, Fla., but because of slow delivery service it is currently using other sources. | Georgia Highway, Jordanna, Dennis, Carolina, T.I.M.E., Mercury, Transcon, and Campbell. | Average transit time is 5 days including weekends. Wants second-day service from Atlanta & Birmingham to Fort Smith. | Jones. Jones proposes to serve to and from Atlanta and thus shipper would still have to rely on a joint-line service. |
| 77. (84) General Business Forms, Inc., Evansville, Ind. Business forms. | From Evansville to Atlanta, Ga. and Birmingham, Ala. Shipments are LTL weighing an average of 150 pounds. | Jones, ABF, Campbell, Red Ball, Ryder, Watson, ADF. | Wants a single-line service. Transit time from 2 to 4 days including weekends. Allows 4 to 5 days lead time. Wants second day service to Atlanta and Birmingham. | Jones. Shipper routes about 75 percent of its outbound traffic. Campbell offers direct service to Birmingham and Mobile. Transit time appears to be reasonable. |
| 78. (84) Clinton Mfg. Co., Inc., Clinton, Ark. Car washing equipment. | From Clinton Springs to Birmingham, Ala. and Atlanta, Ga. (as gateways). From 8/20/84 to 12/30/84, shipper transported 9 shipments to points in Florida, Alabama and Georgia with an average weight of about 400 pounds. Shipper moves 2 to 4 shipments a month weighing about 800 to 900 pounds to Birmingham. To Florida, shipper moves about 5 or 6 shipments weighing between 100 and 4,000 pounds. | Campbell, Ryder, Red Ball, Gardena, Bowman, [illegible] region. | Wants single-line service to Atlanta and [illegible] in order to speed up deliveries. Wants second-morning delivery to Atlanta and Birmingham. | Jones. Shipper has not used the services of several joint-line carriers over the Birmingham gateway. |
| 79. (84) Southern Office Supply and Furniture Co. and Texas Printing Company, Fort Smith, Ark. Office supplies. | From Charlotte, N. C., Birmingham, Ala., and points in North and South Carolina to Fort Smith. Receives 6 to 8 shipments a year from Charlotte with each weighing 950 to 980 pounds; receives 5 to 8 shipments a year from Birmingham with each weighing between 500 and 900 pounds, and receives 2 shipments a month from the Carolinas with each weighing 400 to 600 pounds. | Cannon, Jo., Ryder, Mercury, ETSE, Campbell, and Overnite. | Wants faster single-line service. Average transit time 4 days excluding weekends. Wants 2-day service from Atlanta and Birmingham and 1-day service from Spartanburg, S.C. to Atlanta. | Jones. Five or six motor carriers operate between Memphis and Fort Smith. Shipper has never used the Memphis gateway. Consolidated Freightways offers single-line service. |
| 80. (84) Ouachita Upholstery Supply, Inc., Little Rock, Ark. Furniture. | From Atlanta, Ga. and Birmingham, Ala. as gateways to Little Rock. Receives LTL shipments from points in the East through Atlanta. Each shipment weighs about 150 pounds. | Freight Forwarders, Roadway, Thornton, Ryder, Allen, CT&MC, Mercury, Superior, Carolina, Eastern, ICT, T.I.M.E., Campbell, Smith, Overnight, ETSE, Carlisle, Consolidated, Dale, Transcon, Wilson, Georgia Highway, Red Ball, Ohio, Southwestern, Bowman, Midland, Long. | Wants faster single-line service from Atlanta and Birmingham. Jones promises overnight delivery. Shipper introduced a transit time study which indicates generally that the transit times shown are not satisfactory. | Bowman and Jones. Carlisle offers single-line service from New York and New Jersey. Mercury seems to be giving fairly consistent overnight service from Memphis. Roadway 2-6 days from the Carolinas. |
| 81. (83) Holden, Williams, & Link, Fort Smith, Ark. Printed items. | From Fort Smith to points in Georgia (1,500 to 2,750 pounds twice a week), Alabama (700 to 1,500 pounds a week), Florida (1,000 to 2,000 pounds a week), and to North and South Carolina (1,000 pounds a week). Supporting Jones to Atlanta and Birmingham gateways. | Mercury (interlining with other carriers. | Wants second-morning service from Ft. Smith to Atlanta and Birmingham. | Jones. Shipper has an [illegible] agreement with existing service. |
| 82. (83) West Seal Company, Charlotte, and Statesville, steel containers. | From Charlotte to Atlanta, Ga., Columbia, S.C., Florence, S.C., Birmingham, Ala. and Greenville, Charleston and Nashville, Tenn. It sends off shipments to the above points during 1983. Ranging from 200 to 1,500 pounds (LTL). Also from Statesville to Montgomery & Mobile, Ala., Jacksonville, Hinesville, and Pensacola, Fla., and Brunswick and Augusta, Ga., shipper made 63 shipments cumulatively in 1983, ranging from 200 to 6,000 pounds (LTL). | Interstate Interchanging at Little Rock with ETSE, ETSEMC, Overnite, Campbell, T.I.M.E., Dale, Delta, Harper, Doggett, Central, and Rockaway. | Wants a fast reliable, single-line service from Little Rock. Wants a van-line haul service available. | Bowman. Shipper has numerous joint-line services available and has no specific complaints about them. |
| 83. (84) Kendall Manufacturing Company, Pittsburg, Pa. Paving mixers and rollers. | From shipper's plants at Russellville, Ark. and Sulphur Springs, Tex. to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Only volume figures given are from Sulphur Springs (about 100,000 pounds a month), to the Southeast. Ships to Atlanta from Sulphur Springs three to four times a week (LTL). | ABF, Tennessee, Overnite, ETSE, Mercury, ETSE, Ryder, ETSEL. | Wants single-line service. | Red Ball. Shipper states that Red Ball's service would be more convenient. Jones can perform some single-line service. Shipper has several motor line haul carriers available. There are no specific complaints about transit time. |
| 84. (84) Poole Truck Line, Inc., Conway, Ark. Common carrier, Salt Truck Line, Inc., Conway, Ark. Common carrier. | No specific given but involves transporting general commodities to points in Arkansas, and Memphis, Tenn. | Red Ball, ABF, Control, Tennant, Campbell, ETSE, Carolina, T.I.M.E., Ryder. | Wants to interline with applicant. | Bowman. |





Summary of evidence of supporting shippers—Continued

COLORADO

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 1. (84) Intermedics Corporation, Denver, Colo. Luggage. | From Denver to Atlanta, Ga. (3 million pounds a year). From shipper's Atlanta warehouse to points in Louisiana and Mississippi (250,000 pounds a year). Each shipment weighs about 100 pounds. From Birmingham, Ala., to Atlanta (6 ships 10,000 pounds a year. | Taylor, Cole, Ryder, Georgia Hwy. [illegible], ..., Highway. | Wants faster and consistent single-line service. Allows 7 days for delivery. | Ref Bell. General existing carriers offer single-line service from Atlanta to points in the destination States. |
| 2. (83) Gardner Denver Co., Denver, Colo. Mining and construction equipment. | From Denver to Atlanta, Ga., and Birmingham, Ala., and return. Outbound about 84,000 pounds monthly and inbound about 9 shipments monthly weighing 170 pounds each. | Watson-Wilson, M., ...sday, P.I.E., RLA., Red Ball. | Prefers direct single-line service. Shipper states that average transit time is 6 days, and that transit times now range between 3 days and 11 days. | Red Ba... Watson-Wilson offers single-line service from Denver to Atlanta. No specific complaints. |
| 3. (84) Electron Corporation, Littleton, Colo. Iron and steel shafting, pulleys and sheaves. | From Littleton to Atlanta, Ga., and Birmingham, Ala. About 441,000 pounds and 22,870 pounds shipped to respective cities yearly. | Red Ball, Watson-Wilson, Denver-Chicago, Ryder. | Wants faster service. Prefers single-line service. | Red Ba... |
| 4. (83) Cotton Rubber Co., Denver, Colo. Rubber products. | From Denver, Natchez, Miss., and Dallas, Tex., to Atlanta, Ga., and Birmingham, Ala., and from Atlanta, to Birmingham. Between 100,000 pounds and 4.5 million pounds moves yearly. TL and LTL. | Watson, Mercury, Arkansas Best, IMC, I.M.T.S., P.I.E., Watson, Kingsbury, D-C, Gardena, Terminal, Ryder, Atlanta Mtr., Dale, ABF, Thornby, ICT, P.I.E., Transcon, Ryder, Watson-Wilson. | Inconsistency of existing services wants service in 3 or 4 days service average "now-but time now is 6 days including weekends. | Red Ba... Watson-Wilson recently started a single-line service to Atlanta. Transit studies does not include all shipments during period covered. |
| 5. (79) Hagen Corporation, Colorado Springs, Colo. Tape recorders and parts thereof. | From Colorado Springs to Birmingham, ... (Sept. 1984: 11 shipments, total weight 13,952 pounds) and Atlanta, Ga. (Sept. 1984: 5 shipments total weight 1,862 pounds). | Watson, Ryder, Watson-Wilson. | Wants faster single-line service. Loss chance of damage to its product if it had single-line service. Wants second-morning service to Birmingham and Atlanta. | Red Ball. No evidence of poor existing service. |
| 6. (73) Dana Parts Company, Pueblo, Colo. Internal combustion engine parts. | From Colorado Springs, Colo. to Atlanta, Ga. (99.8% pounds a year) and Birmingham, Ala. [illegible] pounds a year. | 88 interlining with Yellow Transit, D.S.I., Navajo, and Denver-Chicago. | Present joint-line service essentially the same. | Red Ba... No evidence of poor service shown. |

CONNECTICUT

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| 1. (78) Jewett Corp. | See shipper under Massachusetts heading. | | | |
| 2. (79) American Cyanamide Company, Inc., Wayne, N.J. Chemicals, dye intermediates, consumer toiletries, plastic welding compounds, synthetic resins, veterinary biologicals, drugs and medicines. | From Waterbury, Wallingford, and Bridgeport, Conn., Grand Brook and Princeton, N.J.; Springfield, Mass., and Pearl River, N.Y. shipments move to shipper's warehouse at Dallas, Tex. Protective service is required on one half of the movements from Princeton and on 5 percent of the movements from Pearl River. About 1.3 million pounds a year moves from Grand Brook to Dallas; 3.0 million pounds from Springfield, 1 million pounds from Wallingford, 225,000 pounds from Princeton, and .6 million pounds from Pearl River. Most of this traffic moves in TL lots, but shipper has a consistent, though less frequent, need for LTL service. Shipper expects a 15 percent annual increase in its business through 1985. | Shipper uses the services of motor common carriers, Freight Forwarders, rails and controls lines and sealand service for the movements of products outbound from eastern points to Dallas. Strickland and Roadway have been used in service. | Shipper requires spot pickup service at Princeton and Pearl River on traffic to Dallas. It would like to plan its inventory level on a 4-day service on TL movements from New England, New York, and New Jersey and Dallas. However, shipper must allow 9 days for delivery to Dallas. Transit time is important because [illegible] in the manufacturing cycle. If the applications are granted shipper will terminate much of its use of transportation [illegible] for motor carrier. Shipper indicates that Strickland does not offer consistent service and that Roadway does not render satisfactory transit times. In one TL movement handled by Roadway the transit time was 4 days including a Saturday, Sunday, and Holiday. | Bowman and Johnson. Shipper indicated that it understood that Johnson has refrigerated equipment and that if it is granted the authority sought herein will reinstitute refrigerated service. It uses applicants' services and described that as satisfactory. Johnson provides shipper temperature controlled service. It can serve all of the origin points while Bowman cannot serve Wallingford, Waterbury, Bridgeport, and Springfield. Sealand has been used on all the traffic requiring temperature control from Princeton and Pearl River in the 12 months before the hearing. Shipper has tried Moore's temperature controlled intermodal service between the East and New England on the one hand, and, on the other Dallas and found it satisfactory service. |
| 3. (80) Hudson-Rush, Inc., East Hartford, Conn. Air-conditioning and refrigeration equipment. | From East Hartford to points in Texas, Louisiana and Mississippi. Shipper moves about 20,000 pounds monthly of LTL shipments to Baton Rouge, Monroe, and Shreveport, La. and Jackson, Miss. | Johnson, Roadway, Seaco, Control, Allen, Dale, Ryder, Overnite, Merchants, ETSEMC, Texas & Pac. West, Gardena, Red Ball, Ohara. | Wants faster single-line service to Mississippi and Louisiana. | |
| 4. (83) Danielson, Conn. | See shipper under Massachusetts heading. | | | |

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Summary of evidence of supporting shippers—Continued

DELAWARE

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
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| 1. (5N) Rockford, Del. | One shipper under Massachusetts heading. | | | |

FLORIDA

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| 1. (5N) Pensacola, Fla. | One shipper under South Carolina heading. | | | |
| 2. (1N) General Aircraft Corporation, Miami, Fla. Aircraft engines and parts. | Outbound shipments move from Miami to Dallas and Houston, Tex. and through Dallas to points in California. Inbound shipper receives movements from Dallas and Houston and from California as well as from other points. Between 1/1/60 and 6/10/60, shipper had 30 movements to Dallas of which 22 were handled by Herrin and 8 were handled by air lines. It also had two shipments to two California points, one half of the airline traffic would be continued to Herrin if its application is granted. Shipper receives about three inbound shipments a week by motor carrier and about five inbound shipments a month from Dallas and Houston. | Herrin, Ryder and Central Gulfway inbound traffic. Herrin originates shipper's outbound traffic. | Shipper wants 3- or 4-day service between Miami and points in California. Time in transit is important because stock is limited and repairs to airplane engines have to be made as rapidly as possible in order to avoid an excessive loss of revenue. Shipper was not satisfied with Ryder's pick-up service and with transit times on the carrier's inbound interline service. Also, in 1963 Ryder shielded an engine for about a week. | Herrin. Shipper does not control the routing on inbound shipments. It did not cite any specific instances of unsatisfactory service outbound from Miami to Dallas or to points in California. Shipper has very little traffic moving outbound to Houston. It is interested primarily in service of inbound traffic. |
| 3. (31N) Lakeland, Fla. | One shipper under Georgia heading. | | | |
| 4. (5N) W. Brown, Inc., Pegasus, Inc., Miami, Fla. Metal containers and subparts. | From Miami to points in Arkansas, Louisiana, Mississippi, Missouri, Kansas and Texas. About 500,000 pounds every 4 months. | Herrin, Ryder, Central, Overland. | Difficulty in obtaining pickups, and objects to number of transfers of the freight in transit. | Herrin. Shipper objects to its freight being trans at more than one point. |
| 5. (5N) Tandy Leather Co. & American Handicraft., Miami, Fla. Crafts & leather supplies. | From Fort Worth, Tex., to Miami. Approximately between 15 and 20 shipments move a month ranging between 200 and 500 pounds. | Herrin, Central, Overland, Vreeland, Lost Texas, Ryder, Morris, Red Ball, Tennessee. | Joint-line service inadequate. | Herrin. |
| 6. (5N) Jewels & Beads, Inc., Miami, Fla. Automobile-manufacturers and parts. | From Dallas, Tex., to Miami. About 150,000 pounds moves annually. | Central, Ryder, Tennessee, Herrin, Morris, Overland. | Needs faster service. Wants 1-day service. | Herrin. |
| 7. (5N) Ogata Specialty Co., Pensacola, Fla. Tube fittings, valves, welding, instrumentation equipment and piping accessories. | From Houston, Tex., and Baton Rouge, La., to Pensacola. Shipments range between 15 pounds and 200 pounds. | Mercury, East Texas, Red Ball, Hall, Central, Georgia, Florida. | Wants faster service. Average days in transit is 7, including weekends. Wants 5-day service. | Herrin, Johnson. Transit time study does not include all shipments. |
| 8. (5N) Standard & Valentine Co. Continental, Fla. Resin compounds, emulsions, and printing inks. | From Continental (Pensacola, Fla.) to Camden, Ark., Memphis, Tenn., Monroe, La., Houston, Texas, and Kansas City, Mo., shipments range between 347 pounds and 38,000 pounds. | R.F.D., Gardner, Southeastern, H. Hall, Mercury, Couch, Herrin. | Joint-line service inadequate. Wants 3-day service. Presently allowing between 4 and 5 days lead time. | Herrin, Johnson. |

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Summary of evidence of supporting shippers—Continued

FLORIDA—Continued

| Shipper location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
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| 9. (5N) Pepsi-Cola Coca Cola Bottling Co., Pensacola, Fla. Vending machines and repair parts thereof. | From Pensacola to Crossett, Ark., Kansas City and Springfield, Mo., Garland, Longview, Port Arthur, and Texarkana, Tex. and Baton Rouge, La. Ships between 300,000 and 350,000 tons a year, mostly in 7½ lots. A substantial portion of the empty tonnage is transported by rail. | Mercury, Morris, Southeastern, Red Ball, Cooper, Adams, Johnson and Hunt. | Has had substantial delays with joint-line service and has had damage to its product. Wants single-line service which should save one day in transit. At times needs refrigerated vans and flat-bed equipment. | Herrin, Johnson. Shipper witness acknowledged that joint-line service to several points has been good. |
| 10. (5N) Ad Engle Paper Co., Pensacola, Fla. Paper and paper products. | From Miami, Fla., to Kansas City, Mo., Irving, Fort Worth, and Dallas, Tex., and Little Rock, North Little Rock and West Memphis, Ark. Shipped in excess of 2,000 pounds in a 4-month period to the above points. (LCL). | Herrin, T.I.M.E., Tennessee, Cardinal. | Present service is too slow. Wants Herrin to have single-line service to get faster delivery. Needs 3- to 4-day service. | Herrin. There are several gateways shipper has not tried in joint-line service. |
| 11. (5N) Arvid Cellophane Corporation, Miami, Fla. Printed packaging materials. | From Miami, Fla. to points in Texas ships in excess of 40,000 pounds a month (LTL). Each shipment ranges between 1,000 and 4,000 pounds. | Herrin interchanging with Tennessee, T.I.M.E., Cardinal, ETSF, Ryder. | Present service to Tex also. Wants Herrin to have single-line service. Wants 4-day service to Houston. | Herrin. |
| 12. (5N) Shelle Shlow Inc., Miami, Fla. Stainless steel simming equipment in cans. | From Miami, Fla., to points in Arkansas, Louisiana, Missouri, Mississippi, Texas and Kansas City, Kans. Has several distributors and ships to each one about twice monthly. Shipments range from a minimum to 2,000 pounds. | Herrin interchanging with other unknown carriers at Atlanta. | Wants faster delivery and less damage. | Herrin. It appears shipper has very few complaints with existing joint-line service. |
| 13. (5N) Shelley Mfg. Company, Miami, Fla. Fiberglass tube, bowling dispensers. | From Kansas City, Mo., to Miami. Receives two shipments a month averaging 100 pounds. From Miami to points in Louisiana (2 shipments a month), Mississippi (2 a month), Missouri (2 a month), Kansas (1 a month), and Texas (30 shipments in 1962). Shipments range from 100 to 5,000 pounds, averaging between 500 and 600 pounds. | Ryder, Herrin, Vreeland, Jordan. | Inbound - wants no inventory; therefore, it needs fast reliable service. Present service too slow. Wants 3- or 4-day service from Miami to Houston, Tex., and to Mississippi, and Louisiana points. 4-day service to other Texas points and Missouri. | Herrin. Presently has two-line service to most points with deliveries made in 3 or 4 days. |
| 14. (5N) Pensacola, Miami, and Orlando, Fla. | One shipper under Alabama heading. | | | |

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Summary of evidence of supporting shippers—Continued

GEORGIA

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 5. (3) Mead Packaging Company, Atlanta, Ga. Paper products | From Atlanta, in LTL and TL quantities 10 million pounds moves by motor carrier annually to Kansas City and to specified points in Arkansas, Texas, and Louisiana. | Roadway, East Texas and Thompson direct to southwest points. Smoker, Alabama-Georgia Express, Ryder Freight Carriers, Morris, East Texas and Red Ball as interline. | Shipper wants direct service so that it can be competitive with other paper producers located in Texas and Louisiana. Existing service is generally described as inadequate because of equipment shortages, backlogs of freight, unbalanced operations, and general indifference. | Morris, Hudson, Red Ball, Strickland, Thompson, and Jones - from Atlanta to New Orleans shipper has available the single-line services of Overton, Dixie Highway, Johnson and Roadway. Shipper maintains a private fleet which, on occasion it uses for movements to points in Texas. It supports the Thomas and Jones applications for authority to serve from Atlanta to points in Arkansas, Missouri and Kansas. |
| 6. (3) Tom Houston Peanut Co., Columbus, Ga. Salted peanuts, candies, and beverage goods | From Columbus to Houston, Fort Worth, Dallas, and Beaumont, Tex., and Monroe, La. During first 3 months of 1966 it moved, by motor common carrier, 19 shipments to Houston (39,350 pounds); 3 to Fort Worth (65 pounds); 9 to Dallas (18,695 pounds); 5 to Monroe (6,800 pounds); and 1 to Beaumont (1,030 pounds). Expects to ship to Lafayette, Lake Charles, Texas, Baton Rouge, Alexandria, Shreveport and Monroe, La. | Just Dixie-Dixie interlining with Morris, Red Ball or Ryder. | Shipper would like to have transit time improved. The availability of prompt, dependable, and consistent service is important. Shipper indicates that it has frequent complaints with respect to transit times. | Morris. Shipper handles the majority of its traffic from Columbus to points in Texas in its own equipment. It uses for-hire carriers to serve some Texas points and on emergency shipments. Georgia Highway and Doggett offer interline service from Columbus to specified Texas points. Also some other specified carriers offer interline service from Columbus to the four named Texas points. |
| 7. (3) Colonial Glass Co., Atlanta, Ga. Imported glass | From New Orleans, La. to Atlanta. Shipper receives at least one shipment each week weighing between 500 and 1,000 pounds. | Dixie-Dixie direct. Also, Johnson direct. Morris and Doggett interlining. | Shipper is not the receiving carrier-receiving delivery is regulars. It refuses to use Johnson because it had a problem with one of this carrier's drivers. Although it receives third-receiving service from Morris interlining with Doggett, it would like to have Morris render single-line service. | Morris. Ryder's service has not been tried because this carrier indicated shipper that it did not want to make daily pickups on shipper's outbound traffic. Shipper has not investigated other available single-line service from New Orleans to Atlanta. Hudson and Doggett offer single-line service from New Orleans to Atlanta. |
| 8. (6) Shirley of Atlanta, Inc., Atlanta, Ga. Ladies and children's clothing | From Atlanta to points in Texas, New Mexico, Colorado, Mississippi, Louisiana, Arkansas, Oklahoma, and Memphis, Tenn. Shipper has daily LTL movements. It ships 35,000 pounds a week with the average shipment weighing approximately 150 pounds to points in the above-described territory, which is served by Red Ball. Shipper expects outbound shipments to remain within the next 3 years because of an expansion program in which it is engaged. | T.I.M.E., Johnson, Thomas, Dixie, Dixie-Roadway, East Texas, and Braxton originate the traffic. Dixie-Dixie interlining with Red Ball are used on shipments to Louisiana. Boston is used to Mississippi points. | Shipper has had difficulty in obtaining pickup service from Ryder. Sometimes it takes 4 days to obtain service from this carrier after a request is made. Although Boston holds authority to serve all points in Mississippi, it would not pick up a shipment destined to State Line, Miss. | Red Ball, Morris, and Johnson. Shipper is satisfied with the service rendered by Roadway to points in Texas. It feels that the 3 or 4-day service rendered by Johnson from Atlanta to New Orleans is not adequate. But, if this carrier is authorized to handle more of shipper's outbound traffic, shipper believes that it would be able to improve the service. |
| 9. (8) Stirling Corporation, Chamblee, Ga. Pharmaceuticals | From Chamblee (located within the commercial zone of Atlanta, Ga.) to Jackson and Vicksburg, Miss., and Dallas, Tex. Shipper has one or two LTL shipments weekly to Jackson and Vicksburg, the shipment worth seven times or to Dallas. Its average shipment weighs 100 pounds. | From Atlanta to Jackson shipper uses Dixie, Ryder, Georgia Highway, and Ellis. Dixie and Ryder are used to Vicksburg. Between Atlanta and Dallas six carriers used. Ryder has handled approximately 75 percent of the approximately 50 shipments to Jackson and Vicksburg in 1966. | Shipper has difficulty in obtaining pickup service from Ryder. In the instances there was a delay of 7 days before picking. Shipper prefers single-line service because its pharmaceuticals are susceptible to damage. | Red Ball. Shipper is only interested in motor carrier service to the two named Mississippi points. While Boston renders single-line service between Atlanta, Jackson, and Vicksburg, shipper has not utilized this service. Although shipper indicates that the service of Georgia Highway Express is adequate, it has not investigated a service involving Georgia Highway Express from Atlanta to Dublin, Ala. and Red Ball. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, size and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 5. (6) Southern Baked Company, Chamblee, Ga. Photographic items | From Chamblee shipper annually ships 1.2 million pounds to New Orleans, La., and 840,000 pounds to specified points in Mississippi. It expects its shipments to increase by 25 percent each year through 1971. Its pertinent daily shipments are LTL weighing between 50 and 12,000 pounds. Annually, approximately one-half million pounds is shipped to Jackson, Miss. This represents about 85 percent of the Mississippi traffic. Other Mississippi points include Greenville, Gulfport, Pascagoula, Ocean Springs, Clarksdale, Meridian, and Natchez. | Dixie-Dixie interlining with Red Ball or Dent at Mobile. Ryder is used on truckload shipments to Birmingham and Memphis and on LTL traffic to Birmingham. East Texas handles the LTL traffic to Memphis. Boston is used to Jackson. Dixie-Dixie was used to Jackson. Johnson is used to Pascagoula, Biloxi, Ocean Springs and Gulfport. | Some of its photographic products require delivery within 24 hours. Delivery beyond 24 hours necessitates the use of refrigerated service. Dixie-Dixie, which holds authority from Atlanta to Jackson inforsed shipper that it could not provide overnight service between these points and that shipper should find another carrier. During a survey period on shipments to Jackson with transit times between 2 and 4 days, Johnson transported a shipment to Tupelo, Miss., rendering next-day service, Boston rendered 4-day service on shipment to Meridian, Miss., Johnson rendered 5-day service on a shipment to Keesler Air Force Base, Georgia Highway rendered 6-day service on a shipment to Hattiesburg, and on a shipment to Hot Springs Johnson rendered 4-day service. The exhibit did not necessarily show all the shipments to these points during the study period nor some of the [illegible] intervening roadcode. | Boston. The direct-line services of Thomas, Ryder, Roadway, and T.I.M.E. are available from Atlanta to Houston. |
| 7. (All Glass Sizes, Inc., Forest Park, Ga. Located within the commercial zone of Atlanta, Ga.) Glass container products | From Atlanta TL shipments to Baton Rouge, La., and Houston, Tex. Shipper has movements to Houston and expects to continue shipping to Baton Rouge in June 1966. | No movements to Houston, Boston originates the shipments and interlines at New Orleans, La., with Missouri Pacific Truck, when the movement to Baton Rouge commences Boston interlining with Pogo-Lorraville will be used. | Shipper expresses a need for Boston's proposed single-line next-day service to Baton Rouge and second-morning service to Houston on TL. | Boston. The direct-line services of Thomas, Ryder, Roadway, and T.I.M.E. are available from Atlanta to Houston. |
| 8. (10) Interior Envelope Manufacturing Co., Atlanta, Ga. Envelopes | Outbound shipments move from Atlanta to Jackson and Greenville, Miss., Shreveport, La., Little Rock, El Dorado and Magnolia, Ark., Birmingham, Ala., and Beaumont, Dallas, Houston, Orange, and Waco, Tex. Inbound shipments are received from Akron, Ohio. It has 55 outbound shipments each month with an average weight of 150 to 250 pounds. During a one year period shipper had about 10 shipments to Houston and 10 to Dallas. Shipper has about two shipments a month to Orange. About 15 shipments a year move to Shreveport and about 3 move to El Dorado and Magnolia. Shipper has one shipment a week to Jackson and one shipment a month to Greenville. | Thomason and T.I.M.E. originate the Arkansas shipments. Dixie-Dixie is used to Jackson and Birmingham and Jordans handles shipper's intra-state traffic. East Texas handles shippers Texas and Louisiana shipments. Carriers other than Dixie-Dixie are also used on shipments to Birmingham. | Present service is unsatisfactory not always fast enough or consistent and time in transit is an important factor. Shipper is not satisfied with the transit time it receives on shipments to Louisiana, Texas, Mississippi, and Arkansas points. Shipper wants second-day service to points in Arkansas, overnight service to Jackson, second-day service to Louisiana, [illegible] second or third-day service to points in Texas. Strickland proposes to meet shipper's needs with respect to these transit times. Shipper had one complaint about the transit time on a shipment to Shreveport handled by East Texas. | Strickland. Shipper was generally satisfied with Dixie-Dixie's service to Birmingham. It has not received a complaint on the service to Houston, Dallas and Orange. It did receive one complaint regarding the transit time on a shipment to Beaumont but it could not remember when the carrier was. Although shipper has received some complaints regarding the transit times on shipments to Birmingham, it could not recall which carrier handled the traffic. Shipper did not have too many single-line services, were available between Atlanta and Dallas, Waco, and Houston. |
| 9. (17) Carpenter Steel Co., Atlanta, Ga. Stainless steel bars | From Atlanta to Houston and Dallas, Tex., and to other unspecified points in Texas. Approximately 100 shipments move during a year to both Dallas and Houston. Almost all the shipments are LTL weighing an average of 500 pounds. During the period of a year approximately 100 orders moved directly to customers located at unspecified points in Texas. | Transcon handles shipper's inbound and outbound traffic. Roadway's service has been utilized to Houston. | Shipper maintains warehouses in Dallas and Houston. Its Atlanta branch has lost business because its Texas warehouses are supplying their customers from shipper's branches in the Pacific Coast because they are receiving better transit time than they can get from Atlanta. The Pacific Coast branches draw their stock from Pennsylvania not Connecticut, and therefore it is Texas customers received stock from Atlanta, shipper would save on freight charges. Shipper would like to regain that business. It feels that [illegible] service would secure it of this business. Shipper received 5-day service from Roadway to Houston and eight-or-seven day service from Thomason on a shipment to Houston. | Strickland. Shipper believes that only Roadway, Transcon and East Texas, are authorized to perform single-line service from Atlanta to Houston and Dallas, but it states that it has been solicited for this traffic by Herrin and United. |

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Summary of evidence of supporting shippers—Continued

(ERWIN—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 10. (181) Stanford Company, Ennis, Tex. (Located in the commercial zone of Atlanta, Ga.) Building materials, hardware and floor tile | From Atlanta to Gatlinburg, McComb and Meridian, Miss., Dallas, Tex., and Blytheville, Ark. Shipper receives at least 12 shipments a month from Houston, Tex. It has between 5 and 15 outbound shipments a month with an average weight between 300 and 1,500 pounds. The inbound shipments weigh between 20,000 and 40,000 pounds. They come to either shipper's Atlanta warehouse or directly to shipper's customers located at points in Mississippi, Alabama, and Louisiana. Common carriers handle about six a month to Dallas and shipper uses its own equipment about 4 a month to Dallas. | To Mississippi points shipper upon the services Denton, Gardner, Dinks, and Ryder. Shipper uses its own equipment in addition to for-hire carriers, as the inbound traffic from Houston. Mercury originates truckload traffic at Houston and interlines it via Gateway at Atlanta. | Shipper expresses a need for Strickland's proposed second-day service on the Loweland tra ffic. | Strickland. Shipper is not interested in Blytheville since it handles this traffic in its own equipment. It has eight units and uses common carrier to handle overflow traffic. If the application is granted, Strickland would have to inter- [illegible] on shipments to Hattiesburg and Meridian. Mercury's service interlining to Atlanta from Houston is described as satisfactory. Shipper did not know how many single-line common carriers are authorized to provide service between Atlanta, Houston and Dallas. |
| 11. (190) (a) Pearson Produce Company, Griffin, Ga. (Canned foodes and vegetables (b) Southern Cotton, Inc., Augusta, Ga. (Cottonseed oil) (c) United Cotton Goods Company, Griffin, Ga., and Dunpha, Tex. (Cotton textile (d) Southwestern Textile Corporation, Griffin and Carrollton, Ga., and Houston, Tex. Textiles (e) Sparks Furniture and Manufacturing Company, Inc., Sparta, Ga. Furniture | (a) Pearson's traffic: moves from Griffin by rail to points in Texas largely to its warehouse located at Dallas, Houston and San Antonio, Tex.) and by private carriage to points in Mississippi, Louisiana, and Arkansas. During 1960, shipper had commitments of 600,000 pounds to specified points in Arkansas, 500,000 pounds to Louisiana, 3.1 million pounds to points in Texas.<br>(b) Southern's traffic moves from Augusta to points in Louisiana, Arkansas, and Texas. Between 1/31/60 and 8/12/60 it shipped in private carriage 35,000 pounds to points in Louisiana, 22,000 pounds to Arkansas 30,307 pounds to points in Texas. Between 1/2/60 and 1/26/60 it shipper by common carriage 24,700 pounds to points in Texas, 20,510 pounds to Arkansas, 9,128 pounds to Mississippi, 12,000 to Louisiana.<br>(c) United's traffic moves from Griffin. It ships approximately 120 a day to "all destinations."<br>(d) Southwestern's traffic moves from Griffin and Carrollo to points named and proposed to be served by applicant.<br>(e) Sparks's traffic moves from Sparta by rail and common carrier. In 1960 shipper ran carload of freight and two TL of freight a week. | Purina and Ryder originate traffic at Augusta and Griffin. Georgia Highway Express and Dixie also originate traffic at Augusta. Overnight originates traffic at Griffin and Augusta. Gardner Freight originates traffic at Sparta. Augusta is used as shipments to points in Mississippi. | (a) Pearson would use applicant's service instead of private carriage and rail if Strickland would provide better service. But even if applicant could provide better service only one third of the rail traffic to Texas would be diverted.<br>(b) Southern Cotton Goos not have bottleneck for its private equipment and if Strickland rendered good transit times it would receive shipper's traffic.<br>(d) Southwestern wants better service with respect to transit times.<br>(e) T.I.R.C. had a restriction on furniture and Hinds has a combination rate consideration to two-line hauls to Mississippi and a portion of Louisiana. | support Strickland if its application is granted, would not be able to serve the supporting shipper's plants but it would interline at Atlanta. Inasmuch as applicant also would not be able to serve all points in Arkansas, Louisiana and Mississippi, traffic moving to those points would still involve at least three-line hauls. If the application is granted but Strickland does not enter conference with the originating carriers, its services would not be used. |
| 12. (191) Cole Manufacturing Company, Rome, Ga. Furniture. | From Rome shipper has about 10 shipments a week to points in Texas, each shipment weighs between 25 and several thousand pounds with the average shipment weighing about 800 pounds. The majority of these shipments were to Dallas, Tex. | Baggett, Georgia Highway, Ryder, and Southern Railway. | Shipper maintains a furniture market and showroom at Dallas and it would like to be able to have samples arrive there on schedule. Baggett has rendered shipper very satisfactory service. Shipper has no direct single-line service from Rome to the Dallas-Fort Worth, Tex., area on furniture. While Ryder holds authority from Rome to Houston, Tex., it generally will not handle shipper's traffic to Houston. Gardner also holds authority from Rome to Houston and Dallas but it will not handle shipper's products. Shipper prefers single-line service because of the fragile nature of furniture. Also tracing would be facilitated and claims would be handled better. | Baggett. Georgia Highway's service is described as satisfactory. This carrier can originate the traffic and interline at Atlanta with any one of a number of carriers holding authority from Atlanta to Dallas. Several carriers also hold single-line authority from Atlanta to Houston and Beaumont. Additionally, Baggett originates the traffic and interlines at Birmingham or Mobile, Ala., with several carriers which hold single-line authority to Houston or Beaumont. This carrier could also interline at New Orleans. |
| 13. (192) General Electric Company, Rome, Ga. Transformers and switches. | From Rome to Houston and Dallas, Tex. During a representative 3 month period about 170,750 pounds in lots of 21,000 pound averages and 19,000 pounds of LTL traffic varying in size from 50 pounds to 7,000 pounds is shipped to the Dallas and Houston areas. | Bell and C & S have single-line authority to Dallas and Houston and are used on an irregular basis. Southern Railway is used on a regular basis. Baggett's services have also been utilized. And, Mercury has been used as a delivering carrier to Dallas and Houston. | Shipper wants to have direct, single-line service between Rome on the one hand, and on the other, Houston and Dallas. It does not use the single-line service of Gateway and Ryder because those carriers essentially do not provide it with the type of service it needs. Shipper occasionally requires special equipment. | Baggett. Gateway Express and Ryder have single-line authority from Rome to Houston. And, Gateway has single-line authority to Dallas. Shipper was aware that other carriers can interline with Baggett at Birmingham or Mobile and transport its traffic directly to Dallas or Houston. Shipper has utilized the services of Gateway for 12 years but not to points in the southwest on outbound traffic. Ryder maintains a terminal at Rome. |
| 14. (193) Union Camp Corporation, Wayne, N. J. Paper products, tall oil products, turpentine, resin, and synthetic plastics | From shipper's plants located at Savannah, Charleston (Hollywood) and Drayton Mountain, Ga., and from its subsidiary mill at Montgomery, Ala., to points in the Southwest and Kansas City, Mo. From Savannah shipments will move to named representative points in Arkansas, Mississippi, Texas, Louisiana, and to Kansas City, Mo., and Tulsa, Okla. From Stone Mountain shipments move to Russellville, Ark., and Kansas City, Kans. From Charleston shipments move mainly to specified points in Mississippi, Arkansas, and Louisiana. In 1960 shipper moved 1,500 tons by motor carrier from Savannah to points in the involved destination territory, 100 tons from Charleston, and 50 tons from Stone Mountain. Both TL and LTL shipments will move from Savannah. Only LTL shipments will move from Charleston and Stone Mountain. Approximately 1.1 million pounds moved from Savannah in TL and LTL lots to Kansas City. This traffic moves between two and four times a month. | From Savannah to Little Rock, Ark., Kansas City, Kans., and Fort Smith, Ark. Ryder originates and interlines with Mercury, Gardner, Jones, Red Line, and Watson-Wilson. To Kansas City, Kans., and Tulsa, Okla., Ryder originates and interlines with Watson-Wilson and Jack Cole. Bell originates traffic to points in Mississippi. Gateway and Mercury have been used in single-line service to points in the Southeast and to Kansas City. Watson originates traffic to Clarks and Tupelo, Miss., interlining with Ryder and Freightways. Ryder and Tennessee are used from Stone Mountain and Charleston. | Shipper has had difficulty in obtaining equipment from Gateway. It does not want to have to rely solely on the services of Mercury. Because Mercury's Savannah terminal closes at 5 p.m. some of shipper's traffic can be delayed up to 18 hours in transit time. Shipper introduced an exhibit showing that on specified shipments from Savannah to points in Kansas, Texas, Oklahoma, Arkansas, and Mississippi the transit times were not satisfactory. Arkansas Express refused to interline at Memphis and deliver shipper's traffic to points in Arkansas, Texas, and Oklahoma. From Savannah shipper wants 2- or 3- day service on TL and 3- to 4-day service on LTL to Kansas City and to Topeka and points in Arkansas, Texas and Louisiana. To Mississippi it wants 1- or 2-day service on TL and 3-day service on LTL. From Charleston and Stone Mountain shipper wants 3-day service on TL, and 5-day service on LTL shipments, to Kansas City; 3 days on TL and 5 days on LTL to Arkansas, Louisiana, and Texas, and to Mississippi, next-day service on TL and 2-or-3 day service on LTL. | Baggett. Gateway Jones, Mercury Jones, Watson's service is satisfactory. Jones's service from Savannah to Atlanta is described as good. Mercury's service is discussed as satisfactory. Shipper indicates that it had the services of Johnson and Brewer in addition to Harris from Savannah it would have adequate service. Shipper has no complaints with respects to the service of Ryder. |





Summary of evidence of supporting shippers—Continued

(ERWIN—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 12. (191) Cole Manufacturing Company, Rome, Ga. Furniture. | From Rome shipper has about 10 shipments a week to points in Texas, each shipment weighs between 25 and several thousand pounds with the average shipment weighing about 800 pounds. The majority of these shipments were to Dallas, Tex. | Baggett, Georgia Highway, Ryder, and Southern Railway. | Shipper maintains a furniture market and showroom at Dallas and it would like to be able to have samples arrive there on schedule. Baggett has rendered shipper very satisfactory service. Shipper has no direct single-line service from Rome to the Dallas-Fort Worth, Tex., area on furniture. While Ryder holds authority from Rome to Houston, Tex., it generally will not handle shipper's traffic to Houston. Gardner also holds authority from Rome to Houston and Dallas but it will not handle shipper's products. Shipper prefers single-line service because of the fragile nature of furniture. Also tracing would be facilitated and claims would be handled better. | Baggett. Georgia Highway's service is described as satisfactory. This carrier can originate the traffic and interline at Atlanta with any one of a number of carriers holding authority from Atlanta to Dallas. Several carriers also hold single-line authority from Atlanta to Houston and Beaumont. Additionally, Baggett originates the traffic and interlines at Birmingham or Mobile, Ala., with several carriers which hold single-line authority to Houston or Beaumont. This carrier could also interline at New Orleans. |
| 13. (192) General Electric Company, Rome, Ga. Transformers and switches. | From Rome to Houston and Dallas, Tex. During a representative 3 month period about 170,750 pounds in lots of 21,000 pound averages and 19,000 pounds of LTL traffic varying in size from 50 pounds to 7,000 pounds is shipped to the Dallas and Houston areas. | Bell and C & S have single-line authority to Dallas and Houston and are used on an irregular basis. Southern Railway is used on a regular basis. Baggett's services have also been utilized. And, Mercury has been used as a delivering carrier to Dallas and Houston. | Shipper wants to have direct, single-line service between Rome on the one hand, and on the other, Houston and Dallas. It does not use the single-line service of Gateway and Ryder because those carriers essentially do not provide it with the type of service it needs. Shipper occasionally requires special equipment. | Baggett. Gateway Express and Ryder have single-line authority from Rome to Houston. And, Gateway has single-line authority to Dallas. Shipper was aware that other carriers can interline with Baggett at Birmingham or Mobile and transport its traffic directly to Dallas or Houston. Shipper has utilized the services of Gateway for 12 years but not to points in the southwest on outbound traffic. Ryder maintains a terminal at Rome. |
| 14. (193) Union Camp Corporation, Wayne, N. J. Paper products, tall oil products, turpentine, resin, and synthetic plastics | From shipper's plants located at Savannah, Charleston (Hollywood) and Drayton Mountain, Ga., and from its subsidiary mill at Montgomery, Ala., to points in the Southwest and Kansas City, Mo. From Savannah shipments will move to named representative points in Arkansas, Mississippi, Texas, Louisiana, and to Kansas City, Mo., and Tulsa, Okla. From Stone Mountain shipments move to Russellville, Ark., and Kansas City, Kans. From Charleston shipments move mainly to specified points in Mississippi, Arkansas, and Louisiana. In 1960 shipper moved 1,500 tons by motor carrier from Savannah to points in the involved destination territory, 100 tons from Charleston, and 50 tons from Stone Mountain. Both TL and LTL shipments will move from Savannah. Only LTL shipments will move from Charleston and Stone Mountain. Approximately 1.1 million pounds moved from Savannah in TL and LTL lots to Kansas City. This traffic moves between two and four times a month. | From Savannah to Little Rock, Ark., Kansas City, Kans., and Fort Smith, Ark. Ryder originates and interlines with Mercury, Gardner, Jones, Red Line, and Watson-Wilson. To Kansas City, Kans., and Tulsa, Okla., Ryder originates and interlines with Watson-Wilson and Jack Cole. Bell originates traffic to points in Mississippi. Gateway and Mercury have been used in single-line service to points in the Southeast and to Kansas City. Watson originates traffic to Clarks and Tupelo, Miss., interlining with Ryder and Freightways. Ryder and Tennessee are used from Stone Mountain and Charleston. | Shipper has had difficulty in obtaining equipment from Gateway. It does not want to have to rely solely on the services of Mercury. Because Mercury's Savannah terminal closes at 5 p.m. some of shipper's traffic can be delayed up to 18 hours in transit time. Shipper introduced an exhibit showing that on specified shipments from Savannah to points in Kansas, Texas, Oklahoma, Arkansas, and Mississippi the transit times were not satisfactory. Arkansas Express refused to interline at Memphis and deliver shipper's traffic to points in Arkansas, Texas, and Oklahoma. From Savannah shipper wants 2- or 3- day service on TL and 3- to 4-day service on LTL to Kansas City and to Topeka and points in Arkansas, Texas and Louisiana. To Mississippi it wants 1- or 2-day service on TL and 3-day service on LTL. From Charleston and Stone Mountain shipper wants 3-day service on TL, and 5-day service on LTL shipments, to Kansas City; 3 days on TL and 5 days on LTL to Arkansas, Louisiana, and Texas, and to Mississippi, next-day service on TL and 2-or-3 day service on LTL. | Baggett. Gateway Jones, Mercury Jones, Watson's service is satisfactory. Jones's service from Savannah to Atlanta is described as good. Mercury's service is discussed as satisfactory. Shipper indicates that it had the services of Johnson and Brewer in addition to Harris from Savannah it would have adequate service. Shipper has no complaints with respects to the service of Ryder. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 16. (47) Welch Juice Company, Atlanta, Ga. Loose-leaf devices and forms. | Inbound shipper receives shipments from Chicago, Ill., and Elizabeth, N. J. at its Atlanta warehouse. Outbound from Atlanta it ships to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, Vicksburg, and Greenville, Miss. During the first 2-months of 1966 shipper had 144 shipments to points in Mississippi, weighing a total of 19,519 pounds, with the average shipment weighing about 170 pounds. | Johnson is used to Mobile, Ala. and Bowman is used to Birmingham, Ala., Dixie and Georgia Highway are used interlining at Birmingham. | Shipper expresses a need for second-day single-line service to the Mississippi points named. It has limited dock space and therefore wants the number of carriers serving it limited. | Bowman and Johnson. Deaton's service along with that of Bowman, Dixie, and Johnson is described as satisfactory. |
| 17. (35) General Auditor and Pile Corporation, New York, N. Y. Photographic and reproduction materials | From shipper's destination center at Atlanta, Ga., to the Jackson, Mississippi area and the Baton Rouge, La., area. Approximately 120,000 pounds a year moves to Mississippi and 80,000 pounds moves to Louisiana annually. During the first 5 months of 1966 shipper had 23 movements weighing a total of 31,210 pounds collectively to Jackson and Vicksburg, Miss. Only three of the shipments moved to Vicksburg. | The single-line services of Dixie and Ryder are used on shipments to Mississippi. Of the 23 shipments moving to Mississippi points in the first months of 1966 Ryder handled only 7. | Shipper wants 2-day service to points in Mississippi. It indicates that its present service is not satisfactory. It receives complaints almost every week about service from one consignee at Jackson. | Bowman and Johnson. Shipper has used the services of Bowman and Johnson and describes them as satisfactory. Shipper has not made an investigation to determine what other services are available from Atlanta to its destination territory. |
| 18. (36) Wemar, Inc., Atlanta, Ga. Chemicals and sanitary supplies | From Atlanta to its 100 customers located at Meridian, Jackson, Laurel, Greenville, Vicksburg and Columbus, Miss.; shipper has about 6,000 pounds moving each week. To Laurel it has weekly shipments ranging from 100 to 10,000 pounds. If single-line service were available shipper would have traffic moving to points in Louisiana and Arkansas. | On shipments to the named Mississippi points, United or Alabama Georgia originates the traffic and interlines at Birmingham with Campbell and West. Occasionally Deaton and Baggett originate the traffic. Bowman also originates the Mississippi traffic interlining with West. | Shipper wants second-day service from Atlanta to the named Mississippi points. Baggett holds shipments at Birmingham sometimes as long as 15 days, even though shipper has complained of this practice. Shipper has experienced delays in pickups with Deaton. | Bowman, Johnson and Jones. Ryder has been used on shipments to Mississippi. However, shipper complains of delayed pickups with this carrier. Shipper uses the services of Bowman and Johnson and indicates that they are satisfactory. |
| 19. (37) Peterson Mills, Atlanta, Ga. Lingerie | From Atlanta to specified points in Arkansas, Louisiana, Texas, Missouri, Oklahoma, Florida, and Mississippi, during the past 6 months of 1966, shipper had 81 shipments with a total weight of 8,364 pounds and with a average weight of 164 pounds a shipment. | T.I.M.E., Ryder, East Texas, Johnson Gardner, Wade and Deaton. Additionally shipper uses the Southern Railroad. Johnson handles shipper's Louisiana traffic in single-line service. Dixie and Deaton handle shipper's Mississippi traffic. | Shipper has limited dock space and needs consistent pickup service to keep the dock area from becoming overcrowded. It prefers single-line service and wants second- or third-morning delivery to points in Mississippi; fourth-morning delivery to Arkansas; fourth-morning delivery to Texas; third-morning to Louisiana; and fourth or fifth-morning to Missouri. | Bowman, Johnson, and Jones. Shipper did not know of any direct service to points in Texas. Johnson service to New Orleans, La., is described as good. Shipper complains generally about the pickup service of Ryder after it merged with Mercury. However, it had no complaints with respect to the service rendered by Ryder in first 6 months of 1966. It did not know whether or not there is a single line service from Atlanta to Houston, Dallas, and Fort Worth, Tex., and points in Arkansas. Also, shipper did not know the points T.I.M.E. could serve direct. |
| 20. (40) Ehrsh and Dooley Company, St Louis, Mo. Pantyhose | From Atlanta to Memphis, Tenn., and to New Orleans, Baton Rouge, Lafayette, Harvey, Metairie (both Metairie and Harvey are located within the commercial of New Orleans,) Monroe, Alexandria, Bay Iberia, Morgan City, and Lake Charles, La. with daily shipments to New Orleans and one or two shipments a week to each of the other points. Shipments range from a minimum weight to 1,000 pounds, with the average shipment weighing between 200 and 300 pounds. | Ryder's and Cole's service have been utilized. Cole is used on shipments to New Orleans. | Shipper is not receiving satisfactory transit time from Cole. It wants the service of a carrier capable of serving all of its destination territory so as to avoid congestion at its loading dock. Shipper attempted to use Baggett's service to New Orleans but could not receive satisfactory pickup service. | Herrin. Shipper has not made an investigation to ascertain the availability of carriers to Memphis, New Orleans, or any of the other named destination points. Shipper is satisfied with Ryder's pickup service. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 21. (41) Bemis Co. of Georgia, Inc., Atlanta, Ga. Wall board, fiber glass, metal moldings, and adhesives. | From Atlanta to Baton Rouge, New Orleans, Lake Charles, Lafayette, Shreveport, Houma, and Alexandria, La.; Jackson, Meridian, Biloxi, Gulf Port, Miss.; Little Rock and El Dorado, Ark.; and Dallas, Fort Worth, Houston, Waco, Tex. Shipper has four movements a month to New Orleans; about two movements a month to each of the remaining named Louisiana points; one a month to the Mississippi points and about five times a month to the named Texas points. It expects to ship to the Arkansas points. Its shipments are TL and LTL. | Ryder, Central, Dale Hale, Johnson, Bowman, and Overnight with Herrin. Johnson, Overnight and Ryder used to New Orleans. East Texas is used to Fort Worth and Dallas. Sometimes Overnight originate Houston traffic and interlines it at Macon, Ga., with Herrin. | Shipper has experienced problems with Ryder on pickups and slow delivery. | Herrin and Hal Hall. |
| 22. (47) Hazel Hall Products Division of Hercules Corp., Atlanta, Ga. Wall paneling, adhesives and allied products | From Atlanta shipper has daily movements to points in Louisiana, including Baton Rouge, Lafayette, Lake Charles, Harvey, and New Orleans. The shipments range from a minimum weight to 15,000 pounds with the average shipment weighing about 500 pounds. | Johnson, Dixie, and Ryder. | Shipper wants single-line service. Johnson renders good pickup and delivery service. However, when shipper's traffic has to be interlined there are delays. Dixie renders good pickup service but shipper has had complaints with respect to its transit times. Because shipper's product is damageable it does not want to have to rely on interline service. | Herrin and Johnson. Shipper has had some difficulty in obtaining pickup service from Ryder. Herrin and Baggett hold authority from Atlanta to New Orleans. Shipper has used Herrin. |
| 23. (48) Lith Tim Foam Products, Franklin Parks, Illinois Mattress covering and ticking | From shipper's Conyers, Ga., plant to its plant at Mesquite (which is located in the Dallas, Tex. commercial zone) and Houston, Tex. Shipper has 50 to 75 expedited movements a month to the two Texas points with an average weight of 500 pounds. | East Texas, Ryder, and Bradley are used from Atlanta to Houston, and Transcon and East Texas to Mesquite. Deaton originated the traffic at Conyers and interlines at Atlanta with the above-named carriers. Shipper, however, has commenced using its own equipment to deliver the shipments to Atlanta. Bradley and Johnson made pickups at Conyers for a short period. Bradley and Johnson were used from Atlanta to Mesquite. | Shipper wants between 2- 4-day service from Atlanta to Houston. It must be consistent service. East Texas is not rendering consistent service from Atlanta to Houston. Shipper introduced an exhibit showing transit time for a 5-month period from Conyers to the two Texas points. To Houston shipper received between 3- and 8-day service. To Mesquite it received between 3- and 9-day service. Intervening week-ends and holidays were included in computing the transit times. | Brotherhood. Bradley holds single-line authority from Conyers to Mesquite and Houston. Shipper's use of its own equipment from Conyers to Atlanta has improved transit time to the Texas points. It will continue handling the portion of the movement even if the application is granted. Shipper would rather have consistent 4-day service than have some shipments delivered in 2-days and others delivered in 5- or 6-days. |
| 24. (49) Rumer-Gilmour Lingerie Co., Charlotte, N. C. (Atlanta) Ladies foundation garments | From Atlanta shipper moves between one and five shipments each day weighing between 75 and 300 pounds to New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lafayette, and Lake Charles, La., and between one and six shipments a day weighing between 50 and 300 pounds, with same shipments weighing 1,000 pounds, to Dallas, Fort Worth, Houston, Waco, Galveston, Laredo, and San Antonio, Tex. | Johnson, Dixie, Gordon, East Texas, Georgia Highway, and Ryder. Gordon is used to Dallas and Fort Worth in single-line service. | Shipper has experienced problems with the pickup service of Georgia Highway and Dixie. | Herrin and Hal Hall. Ryder has taken shipper off regular pickup list. Shipper states that Bradley offers single-line service to Fort Worth and Dallas, and that Johnson, Ryder, Herrin, Baggett, and Dixie offer single-line service to New Orleans. |
| 25. (51) Cochran and Company, Atlanta, Ga. Brass fittings | Inbound shipper receives one movement a week from Rossgobbio, Tex. The movements are to LTL lots and weigh about 5,000 pounds. Occasionally shipper has a TL movement. | Shipper had used Hal Hall and Bowman interlining at Memphis, Tenn. It has discontinued this routing and began using Ryder at East Texas as the delivering carrier through Shreveport, La. | Shipper introduced an exhibit which indicates that on 21 shipments picked up random or estimated, show both poor and good service it received inconsistent and inadequate service. The shipments moved from Rossgobbio to Atlanta between 8/27/65 and 7/26/66. All but two of the shipments involved weekends. Most of the shipments had a transit time of 5 days including weekends and the transit times varied from 3 to 10 days including weekends. The shipment requiring 10 days was delivered by Herrin. Shipper wants single-line, 2-day service from Rossgobbio to Atlanta. It would be satisfied with Herrin's proposed Friday to Monday or Tuesday service. | Herrin, Bowman, Johnson, and Strickland. Herrin and Hal Hall are the only applicants authorized to serve Rossgobbio. |

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*Summary of evidence of supporting shippers—Continued*

GENERAL—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 26. (36) Avon Products, Atlanta, Ga. Toilet preparations and related items | From Atlanta to all points in the territory Red Ball presently serves primarily shipments will move to Jackson, Miss., and Alexandria, Baton Rouge, and Shreveport, La. Approximately 120,000 pounds moves monthly with the average weight of each shipment between 200 and 5,000 pounds. | To Shreveport shipper uses two-line haul of Cole and Red Ball interlining at Jackson. To Baton Rouge it uses Cole interlining with GALA at New Orleans. Jackson was used to originate shipments to Baton Rouge. To Alexandria shipper uses Cole interlining with Red Ball. Shipper uses Cole to Jackson. | Shipper has had difficulty in receiving scheduled service on shipments handled in interline service. Shipper supports Red Ball to Jackson because it does not have the selection of carriers it would like. | Red Ball. Shipper is aware that to Jackson it has the direct, single-line services of Cole, Boston, and Ryder. |
| 27. (35) Lathem Time Recorder, Atlanta, Ga. Time recording machines, equipment, and supplies | From Atlanta shipper has about 50 to 75 shipments each month to those points in Texas and Louisiana served by Red Ball. Shipper's average movement weight about 100 pounds. | No westbound traffic from Atlanta, shipper uses T.I.M.E., Transcon, Ryder, G.F.A., Thomas-Wilson, Gardner, Blair, R.E.A., and an occasion, Jackson. | Shipper wants single-line service. | Red Ball. |
| 28. (36) E. R. Squibb & Sons, Division of Olin Mathieson Chemical Corporation, Atlanta, Ga. Drugs and medicines, toilet preparations and related merchandise. | From Atlanta shipments move to Jackson, Greenville, Vicksburg, Hazelhurst, and Gulfport, Miss., and Mobile, Ala. Shipper is primarily concerned with points in Mississippi, especially Jackson. In the first 3 months of 1966 it had 130 shipments from Atlanta to Jackson, ranging in weight between 10 and 500 pounds. For the same period in 1966 it had 127 shipments to Jackson, with the average shipment weighing about 200 pounds. | To Jackson, shipper uses REA and Alabama Georgia Express interlining with each. To Gulfport it uses GMA and GFA. To Vicksburg it uses GFA and also GFA to Mobile, Ala. interlining with Red Ball. | Shipper's traffic must often have protection to transit from heat and cold. It stopped using Mobile to Jackson because of customer complaints regarding transit time. Consistency of service is important because shipper's customers do not maintain large inventories. Expedited service is required to pharmaceuticals and to shipments to hospitals. Shipper has limited loading facilities and wants the services of a carrier that can serve all of the involved points so that congestion at the loading dock can be avoided. | Red Ball. Shipper was aware that Cole had single-line authority to Jackson. It indicated that it was willing to try Ryder's direct single-line service to Vicksburg and Jackson. It is not seeking service to Mobile. Shipper had not tried service of Mobile after it changed ownership. |
| 29. (36) Foote Mineral Company, Kings Mountain, N.C. Lithium specialties | From shipper's Atlanta warehouse until 1/5 shipments were mostly to Baton Rouge, Houma, and Shreveport, La.; once a month to Dallas; and occasionally to the Boston area. The average shipment weighs 300 pounds. | To the three Louisiana points shippers uses Jackson to New Orleans interlining with a connecting service. Woodway is used to Dallas and Houma and East Texas to Dallas. | Because of poor transit time from Atlanta to Louisiana shipper had to commence supplying its Louisiana customers from its Dallas warehouse. If it received second-day service to the named points in Louisiana from its Atlanta warehouse it believes it would be able to again serve its Louisiana customers from Atlanta. | Boston. Shipper uses Boston to Jackson, Miss. and is satisfied with the service. |
| 30. (41) Conso Chad's Gulch Camp, New York, N. Y. Cotton thread and yarn, nylons, wool, and synthetic yarns and related sewing products | From shipper's Atlanta warehouse it has ten 75 ft. a week moving to its Dallas, Tex. warehouse. Between 1/1/66 and 5/31/66 shipper had 48 movements to Dallas weighing a total of 1.3 million pounds. | Boston originates the shipper's traffic and interlines at Greenville, Miss. with Jones. | Shipper computerized its stock control on a 2-day transportation service basis and sometimes transit times are three-days instead. Shipper prefers single-line service and expresses a need for Boston's proposed 2-day service. | Boston. Shipper's experiences with the Boston-Jones service has generally been good. It has experienced only a few instances of inadequate service that Jones was unable to supply truckers at the interchange point. Shipper is aware that Woodway had single-line authority to Dallas but did not know for sure which other carriers held single-line authority to this point. It did not investigate other joint-line services because it has been satisfied with the service of Jones and Boston. |

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| Shipper, location or commodities | Origin, destination, volume, type or frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | Solicited from Atlanta shipments [illegible] throughout [illegible] | [illegible] | [illegible] | Witness, Fort Da..., and Strickland. Shipper was not aware of the single-line service from Atlanta to Hattiesburg and Illinois-Iowa, Miss. The principle interchange by singles involved [illegible] with 22 shipments during a [illegible] period while 3,400 shipments were handled for it during this same period. |
| [illegible] Flour Co., Atlanta, Ga. | Ship Atlanta to points in Texas. During the first 2 months of 1964 shipper had 11 LTL shipments to or through Texas points Baggett seems to serve from Atlanta. The shipments weighed a total of [illegible] with the average shipment weighing [illegible] pounds. Shipper expected to double its volume by 1965 and planned unique to do [illegible]. | Baggett, T.I.M.E., Frank, Illois, Rent, and Empire... | Shipper has a problem with irregularity in its loading dock. It can only load two trailers at the same time. It uses Baggett to points in the Gulf, Southwest, Mississippi, and Louisiana. It intends to ship all eastern bound traffic with Baggett even though it [illegible] have to be interchanged at Dallas or Houston, Tex. Shipper wants Jacksonville to Texas service to points in Texas. It would need protective service only occasionally since it does not manufacture goods which has a low melting point during the summer months. Shipper prefers single-line service. Order has not always made pickups when called. | Baggett. Shipper has used Baggett's service and found it excellent. It has not investigated to determine how many single-line services there are between Atlanta and Dallas and Ft. Worth, Tex. |
| In, (T1) Atlanta, Ga. 10, (T2) Augusta, Ga. | See shipper sales Texas list.<br>See shipper sales Massachusetts heading. | | | |
| 10. (T3) Dunn-Landgraf Company, Inc., Atlanta, Ga. Feed and feedstuffs | From Atlanta shipper has weekly movements to Shreveport (5,000 pounds), Bossier City (2,000 pounds), Baton Rouge (10,000 pounds), Houston (5,000 pounds), and Bonham, Tex. (5,000 pounds). The shipments are LTL weighing on the average 750 pounds. Shipper is not able to ship to its customers at Clarksdale, Greenville, and Greenwood, Miss. and, among other points, Hot Springs, Little Rock, and Pine Bluff, Ark. during the summer months. If it had refrigerated service it would ship 15,000 to 17,000 pounds a week to Little Rock and Fort Smith; about 10 shipments weighing collectively 1,500 pounds to Clarksdale weekly; and about 10,000 pounds each to Greenville and Greenwood weekly. | Rent Texas handles shipper's traffic to Shreveport. Interstate is used to Baton Rouge. | Seasonal as shipper commodities are perishable during the summer months it needs protective service. During the winter months shipper uses common carrier. However, during the warm months shipper uses carriers which can furnish refrigerated service. It has used dry ice to protect its commodity but this limits its shipping time and causes damages in the carrier service. Shipper wants Jacksonville's proposed seven-day service to the named Louisiana points. Rent Texas suggested that shipper not consider its traffic to Jacksonville and Houston during the warm months. | Hershkind, Johnson, and Jones. |
| 47. (DD) Gold-Shamokin Laboratories, Inc., Atlanta, Ga. Drugs | From Atlanta shipments move to all of the southern States, Mt. Sinai, Md., New York, Rhode Island, and Massachusetts. Its usual outbound traffic each month amounts to between 30,000 and 35,000 pounds. The average shipment weighs between 500 and 600 pounds. To Baton Rouge, La. shipper has the equivalent of a month weighing a total of about 600 pounds. To Shreveport, La. it has one or two shipments a month each weighing about 150 pounds. Shipper anticipates having customers in Houston, Fort Worth, and Dallas, Tex. | Aeronca [illegible] which Will is used to Baton Rouge. Also, Johnson Interline service is used to Shreveport. | Shipper had been using Spiker to Baton Rouge but it was having difficulty in obtaining pickups. Shipper has only one loading dock available and it wants to limit the number of carriers serving it. | Hershkind and Johnson. Shipper is generally satisfied with the present service to Baton Rouge. It can not secure how many single-line carriers are authorized to operate between Atlanta, Dallas and Houston. No investigation has been made of the carriers available between Oklahoma and there are to any volume about carriers to these points. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 38. (96) Quality Paint Envelope Co., Inc., Atlanta, Ga. Envelopes. | From Atlanta shipper had 2 shipments every 2 or 3 weeks weighing 20,000 to 25,000 pounds to Dallas, Tex.; every 2 weeks weighing 600 pounds to Columbus, Miss.; every 2 weeks weighing 600 pounds to Greenwood, Miss.; every 3 weeks weighing 400 pounds to Laurel, Miss.; every 3 weeks weighing 500 pounds to Meridian, Miss.; every 3 weeks weighing 400 pounds to Pascagoula, Miss.; every 2 weeks weighing 600 pounds to Vicksburg, Miss.; every week weighing 800 pounds to Greenville, Miss.; and every 2 weeks weighing 1,000 pounds to Jackson, Miss. | To Dallas shipments have been handled by Gardens. To Mississippi shipper has used Dixie and Easton and Georgia Highway interlining with Campbell, GFA interlining with Hunt, and Johnson interlining with Hunt. | Shipper wants single-line service to the destination territory. It has received a few complaints with respect to Gardens' service to Dallas. Between November 1965 and June 1966 shipper had to trace three shipments handled by Gardens. Gardens service has improved. Shipper has received numerous complaints regarding the single-line service of Easton and Dixie to Mississippi points. Shipper wants second- or third-morning service to Dallas, and second-morning service to points in Mississippi. It lost one customer at Carthage, Miss., because of poor motor carrier service. | Benson and Johnson. Shipper uses the services of Easton and Johnson and has found both to be satisfactory. Shipper indicated that Gardens, East Texas, and Roadway have single-line service to Dallas from Atlanta with respect to the points to which shipper has had difficulties with Easton and Dixie, namely, Tupelo, Columbia, Hazlehurst, Brookhaven, Charleston, and Corinth, Miss., shipper indicates that neither Johnson nor Benson proposes to serve these points. Johnson, Jones, and Benson. |
| 39. (97) Swanlin, Inc., Atlanta, Ga. Wallpaper and wall covering. | From Atlanta to specified points in Mississippi, Louisiana, Texas, Oklahoma, and Missouri. From points in the New York, N. Y., commercial zone, Wharton, N. J., and Bucksnan, N. Y. to Dallas and Houston, Tex. The shipments from New York City were principally in LTL lots and average 1,000 pounds a week. The shipments from Wharton were almost daily and weigh between 1,000 and 6,000 pounds. | From New York City to Dallas and Houston, shipper is using Johnson, S.C., and Akers and their connections. T.I.M.E. is used to Oklahoma and Missouri. East Texas is used on shipments to points in Texas. Johnson is used to Louisiana, and Roadway has been used to St. Louis, Mo. and Houston, Tex. Republic Carloading has been used from Wharton [illegible] Warehouse to Dallas. | From Atlanta shipper wants second- or third-morning delivery to Texas, Arkansas, Missouri, and Kansas City. Third day service to Oklahoma and second-day service to Mississippi and Louisiana points is requested. During the first 7 months of 1966 shipper had 11 movements totaling 3,901 pounds handled by Republic Carloading from Wharton and Bucksnan to Dallas. Including weekends the average transit time was 8 days. | Johnson, Jones, and Benson. |
| 40. (98) Carmel Carpet, Dalton, Ga. Carpet | From Dalton to Dallas, Houston, and Fort Worth, Tex. Between 1/1/66 and 5/31/66 shipper had 16 movements to Houston weighing a total of 40,840 pounds, 23 TL to Dallas weighing a total of 109,810 pounds; and 5 movements to Fort Worth weighing a total of 2,340 pounds. All of the shipments to Fort Worth and Houston are to customers. It has a distribution warehouse at Dallas and additionally ships directly from Dalton to customers located at Dallas. Each Friday shipper has a TL movement to Dallas. The above tonnage figures to Dallas include 72,000 pounds shipped by rail[illegible] | From Dalton to Dallas shipper has used Gardens, East Texas, Roadway, Mercury and the Rock Island and Missouri-Pacific Railroads. Only Roadway provides single-line service. Georgia Highway originates and interlines with Gardens and East Texas at Atlanta, Ga., and Mercury at Birmingham. Shipper also uses private carriage to the three Texas points. Roadway also handles shipper's Fort Worth and Houston traffic. | Shipper prefers single-line service. It is not satisfied with the transit time of Roadway. On two occasions Gardens could not accept the Friday TL movement to Dallas until Tuesday. On the Friday TL movements shipper wants delivery by the following Tuesday. On LTL traffic it wants 3-day service when it is handled in single-line service and 4-day service when it is interlined. Shipper introduced an exhibit showing transit times including weekends on 17 randomly picked shipments to Texas and Oklahoma points. To Dallas, Georgia Highway interlining with Mercury delivered one shipment in 4 days; two in 5 days, and one in 12 days. Roadway to Dallas delivered one shipment in 5 days, three in 6 days; and one shipment in 8 days. Georgia Highway interlining with Mercury to Houston, delivered one shipment in 4 days and two in 5 days. Roadway handled one shipment to Houston in 7 days and one to Waco, Tex. in 7 days. | Benson, Johnson, and Jones. Shipper uses Benson's service and is satisfied with it. Johnson and Jones would handle shipper's traffic from Atlanta with Georgia Highway originating it. Shipper could not cite any instance in the year before the hearing when it had lost business because of a lack of transportation service. It has not routed its shipments to Dallas and Fort Worth by Benson originating and interlining with Jones at Memphis, Tenn. because it was not aware of such service until a few weeks before the hearing. It plans, however, to use this routing if it can obtain good service. |
| 41. (99) Thomas Co., Atlanta, Ga. Tractor parts. | From Atlanta to Baton Rouge and Monroe, La.; Dallas, Fort Worth, and Houston, Tex.; and Hattiesburg, Laurel, and Jackson, Miss. All of the shipments are in LTL lots of approximately 2,000 to 3,000 pounds. Five or six shipments a month move from Atlanta to these points. Also, shipper has occasional movements from its warehouse at Dallas to Atlanta. The shipments to Baton Rouge and Monroe move only when shipper's Dallas warehouse does not have the items. During 1966 shipper had between 35 and 50 shipments to Jackson. | Dyker has handled the shipments to Baton Rouge and Monroe. To Houston, East Texas, Roadway and Dyker have been used. To Dallas and Fort Worth Gardens, Roadway, and Transcon have been used. Dalton was used on shipments to Jackson. GFA interlining with Hunt is used to Hattiesburg and Laurel. Johnson has been used in single-line service and in interline service to Laurel. | Shipper has experienced difficulties with existing service. It prefers single-line service. In 1965 shipments to Baton Rouge and Monroe were switched from Atlanta to Dallas because customers complained about transit times from Atlanta. Shipper has received a number of complaints regarding the interline service of GFA and Hunt to Hattiesburg and Laurel. Shipper complains that Cole picked up a shipment on 2/1/66 and when shipper called Cole the following day it was still on Cole's dock. Roadway's service is assertedly generally unsatisfactory. The only specific problem shipper has had with East Texas was with respect to the transit time requested on one shipment which moved in January 1966. Shipper wants a consistent second-day service. Transit time is important to shipper. It has had to rely heavily on bus service to get expeditious service. With Dyker shipper indicates that it experienced difficulties in getting pick-up service. | Benson, Johnson, Jones, and Floyd C Boundary. Johnson single-line service has been used by shipper and it has found the service satisfactory. Shipper believes that the only single-line service between Atlanta and Jackson is Dixie. It has not made an investigation to determine if there is other single-line service between these points. |
| 42. (100) Friden, Inc., Atlanta, Ga. Electronic calculators | Outbound from Atlanta shipments move about twice a week to its branch offices at Lafayette, Lake Charles, Baton Rouge, and Shreveport, La., and Beaumont, Dallas, Fort Worth, and Houston, Tex. Inbound shipper receives machines at Atlanta for repairs from the above-named points. The shipments weigh between 10 pounds and 60 pounds. | Dyker, Dixie, Georgia Road Dee, Air Freight, East Texas, and Transcon. | Service. The service it has received from the lines is described as satisfactory. |





Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 43. (96) Chicago Pneumatic Tool Company, Atlanta, Ga. Pneumatic tools and air compressors and parts. | From Atlanta to points in Louisiana, such as New Orleans, Harvey, Baton Rouge, Alexandria, Shreveport, and Lake Charles, and to points in Texas, such as Houston, Dallas, Fort Worth, and Beaumont. Shipments range in size from 75 pounds to 5,000 pounds, with the average shipment weighing 2500 pounds. Shipper has two movements to New Orleans weekly. | Roadway, Ryder and Georgia Highway in connection with Mercury have been used on this traffic. | Shipper cannot obtain pick-up service from Ryder. It has had complaints of the transit times to Louisiana [illegible] Roadway. It has no complaints on Johnson's service to New Orleans and does not support Herrin for authority to New Orleans. | Herrin. Shipper has no complaints with respect to the transit times on shipments handled by Roadway. It has no complaints on Johnson's service to New Orleans and does not support Herrin for authority to New Orleans. |
| 44. (97) Hill Scientific, Inc., of Georgia, Atlanta, Ga. Scientific instruments, chemicals, and laboratory glassware. | From Atlanta to Taft and Sunnyville, La. Shipper has two movements a week to both Taft and Sunnyville. The shipments weigh between 5 and 500 pounds. | Ryder interlining with Pacific is used to Taft. Dixie, REA and Air Freight are also used to Taft. With shipments handled by REA, [illegible] to agree that pick-up the shipments at Luling, La. | Time in transit is important to shipper since its products are used on research projects. Shipper has received complaints from Taft and Sunnyville customers relating to transit time and breakage with the existing service. | Herrin. |
| 45. (99) Williamson Southern, Inc., Atlanta, Ga. Coated paperboard, synthetic gums or resins, cartons of rubber compounds, chemical solutions, and rubber coated cloth. | From Atlanta shipments are made weekly to Monroe, New Orleans, Hodge, Bogalusa, and Lake, La., Jacksonville and Orange, Tex., Crossett and Pine Bluff, Ark. Approximately 12,000 pounds move outbound a month, and shipments varying in weight between 60 and 8,000 pounds. About 120 pounds moves to New Orleans monthly, and approximately 1,000 pounds moves to Pine Bluff monthly. Shipments to Orange and New Orleans move mostly from shipper's Dallas, Tex., facility because of the better service it receives from this point. | T.I.M.E., East Texas, Gardens, Cole, and Johnson are used in this traffic, Johnson and A.P.U. handle the New Orleans traffic in single-line service. Cole and Red Ball interline at Jackson, Miss., on the Monroe, Hodge, Inc., and Bogalusa traffic. East Texas handles Orange and Jacksonville traffic in single-line service. | [illegible] complaints indicating that the transit times on its shipments to the involved points is slow, and that shipments have been lost. | Red Ball and Johnson. Shipper has used the services of Red Ball and Johnson and describes them as satisfactory. It has not had any complaints on the Atlanta to Shreveport traffic which Johnson proposes to handle. Shipper's traffic to New Orleans has specified that it wants Red Ball to transport its shipments from Dallas because it gets better service from Dallas than it gets from Johnson from Atlanta. Shipper did not know that there are four other carriers besides Johnson offering single-line service from Atlanta to New Orleans. |
| 46. (100) Texas American Textiles Company, Atlanta, Ga. Hardware machines, wood-work machine parts, pliers and shipper valves and veneer tape. | From Atlanta shipper moves about 5,000 pounds a week to points in East Texas, Louisiana, Mississippi, and Arkansas. The average weight of the shipment is about 90 pounds. Shipments move to Corrigan, Jacksonville, St. Augustine, Center, Jasper, and Livingston, Tex., among other unspecified points in this State. | [illegible], Dixie, Baggett, Benson, and T.I.M.E. Dixie originates the traffic to the Louisiana and Texas points. T.I.M.E. performs a single-line service to some of the Arkansas points. | Shipper has received complaints from consignees in Texas and Louisiana regarding the existing motor carrier service. It normally allows 7 days for delivery to the points in Louisiana. Shipper has experienced difficulty in obtaining pickup service for Ryder. It has experienced difficulty in tracing interline shipments which were originated by Dixie. Dixie responds to the tracers in a reasonable time but the connecting carriers take 2 or 3 weeks to reply. One of the connecting carriers is Red Ball. | Red Ball and Herrin. |
| 47. (101) Westinghouse Parts Center, Atlanta, Ga. Appliance parts | Outbound from Atlanta shipper has about 15 shipments a month to New Orleans, La.; 6 shipments a month to Shreveport; 6 a week to Baton Rouge, La.; 2 to 3 a month to Morgan City, La.; 1 or more a month to Natchez, Miss.; 2 a month to Alexandria, La.; 3 a month to Lafayette, La.; and on several occasions to other specified Louisiana points. Shipper also has occasional movements from Atlanta to Jackson, Miss., and ships to a portion of Texas and to Alabama. Shipper's outbound tonnage is approximately 3,000 pounds a week with the average shipment weighing about 90 pounds. Inbound, shipper receives at Atlanta about 25 to 35 shipments a month of returned parts from the above-specified points. The total monthly tonnage is about 2,000 pounds with the average shipment weighing 80 pounds. | Johnson, Georgia Highway, R.E.A. and [illegible] service. Dixie originates traffic upon at a customer's direction. Johnson originates traffic to all of the Louisiana points and interlines it with connecting carriers. It renders single-line service to New Orleans. | Time in transit is important to shipper [illegible] customers do not carry large inventories. Most of its shipments are of an emergency nature. Shipper has had complaints from customers located in the destination territory about transit times. Shipper prefers single-line service because it lessens the risk of damage. It is supporting these two applications so that it will have a choice of service. | Red Ball and Johnson. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 48. (1283) Grain Extender Co., Inc., Atlanta, Ga. Metal agriculture; insecticide liquids, agriculture; insecticide dusts and related articles and cosmetics | From Atlanta shipper has movements to points in Louisiana, Colorado, Texas, New Mexico, Arkansas, and Mississippi. Approximately 600,000 pounds moves these points annually. The average shipment weighs between 30 pounds and 500 pounds. Shipper has branches at 12 Texas points including Dallas, Beaumont, El Paso, Fort Worth, San Antonio, Houston, Austin, Corpus Christi, and Lubbock, Tex., and at 15 Louisiana points including Baton Rouge, New Orleans, Lafayette, Alexandria, Benton, Shreveport, Lake Charles, New Iberia, and Crowley, La. It has a monthly shipment moving to each of its branches from Atlanta. Additionally during the month it has "fill-in" orders to the branches. | Cole, Denton, Benson, Dixie, Transcon, RCA, T.I.M.E., Gardner, and Johnson. Dixie originates shippers Texas and Louisiana traffic and interlines at Jackson, Miss. | Shipper has received complaints from its branches regarding transit times. It prefers single-line service because it can obtain better service, faster delivery, and there is less chance of loss. Shipper expresses a need for the proposed second-day service to points in Texas and Louisiana and first-day service to New Orleans and Jackson. Shipper introduced an exhibit covering 52 shipments between 7/2/61 and 9/15/61. Its basis pertinent the shipments moved from Atlanta to points in Texas and Louisiana. They involve about 50 percent of the traffic to these destinations and are listed because shipper received a complaint regarding each shipment. All of them were originated by Dixie-Cole and interlined with Red Ball. Including weekends two shipments were delivered to Baton Rouge in 2 days. Including weekends the transit times to destinations to these two States ranged between 3 and 7 days. One shipment to Beaumont involved 8 days. | Red Ball and Herrin. Shipper is primarily interested in service to Texas and Louisiana points. It is only aware of the single-line service of Southern and Texas from Atlanta to Fort Worth, Dallas, Houston, Austin, and San Antonio. |
| 49. (1295) Principal, Inc., Atlanta, Ga. Cellophane or plastic bags, packages and wrappers. | From Atlanta shipper has 17+ movements twice a month to Abbeville, Lafayette, and Rayne, La. weighing 500 pounds to 1,000 pounds each. Additionally four or five times a year it has 75 shipments averaging 30,000 pounds. Shipper also has one movement a month to Baton Rouge, La., weighing between 1,500 and 2,000 pounds, and one a week to New Orleans, La., weighing 2,000 pounds or more. Shipments move to Alexandria, La., about once or twice a month and weigh about 7,000 pounds. | Ryder, Dixie, Johnson, Benson, and Central. Benson originates the Abbeville, Lafayette, and Rayne shipments and interlines at Memphis, Tenn. with Herrin. Ryder is used to Baton Rouge and was used to Alexandria. Central is used to New Orleans. Johnson also handles this traffic, and Dixie has been used to New Orleans. Johnson also interlines shipments at New Orleans. Cain is used into Abbeville and Rayne. | Shipper prefers single-line service. It has received complaints with respect to delayed service. And, it has complained to Johnson regarding shipments to or through New Orleans. Five days are allowed for delivery in interline shipments to Abbeville, Lafayette, and Rayne. Shipper is not satisfied with Ryder's service because of delays in delivering. It has had difficulty in tracing shipments. | Herrin. Shipper was not able to give specific example of the inadequacies of Ryder's service. Dixie's service to New Orleans was only tried once or twice. |
| 50. (1296) Ruberton Corporation, Decatur, Ga. (Atlanta) Refrigeration and cooling insulating material. | From Atlanta shipper has two or three shipments a week to Alexandria, Baton Rouge, Lafayette, Lake Charles, Houma, New Orleans, and Shreveport, La.; Little Rock and El Dorado, Ark.; and Beaumont, Tex. The shipments weigh between 50 and 500 pounds. About two shipments a month move to New Orleans. | To Louisiana and Texas Ryder, Johnson, and Cole have been used. To Arkansas shipper has used Gardner. East Texas is used to Shreveport and Beaumont. | Shipper has experienced poor pickup service with Ryder in single-line service to points in Louisiana. It has also experienced difficulties in obtaining pickup service from Johnson. | Herrin. Shipper indicates that Johnson's service has been satisfactory in the several cases preceding the hearing. |
| 51. (1272) Magnet-Pur Company, Greenville Service Company, a Division of Magnavox Corporation, Atlanta, Ga. Electronic parts and television picture tubes. | From Atlanta shipper has traffic to Houston, Dallas, Fort Worth, and Beaumont, Tex. During April and May of 1960, (its slow season) shipper had a total of 5 shipments weighing collectively 249 pounds to Houston, 11 shipments weighing 750 pounds to Dallas, and 2 shipments weighing 88 pounds to Beaumont. | T.I.M.E. and RCA, the former is used only to El Paso, Tex. RCA is used to the re-mainder of the Texas points. | Shipper prefers single-line service because its traffic can be consigned and it wants to limit the handling. It is not satisfied with the service rendered by RCA. | Rapport. Shipper did not know of any carrier which provides single-line service from Atlanta to the named Texas points. It has made no investigation. |
| 52. (1301) Merrell-Dow Pharmaceutical Company, Norwich, N. Y. Drugs. | From shipper's warehouse at Atlanta, Ga. to Columbus, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Moss Point, Vicksburg, Greenville, Clarksdale, Grenada, and Winona, Miss. Two or three shipments a day move to Jackson with each shipment weighing an average of 350 pounds. It ships about three to five times a week to the remainder of the points with each shipment weighing an average of 250 pounds. About 90 percent of these shipments require protective service from the cold when the temperature is below 35 degrees Fahrenheit. | Benton, Ryder, and Gardner, RCA, and Parcel Post handle about 10 percent of shipper's traffic. | Shipper wants protective service in the viscerine. It currently is not able to obtain this type of service from the existing carriers. Ryder offers overnight protective service. | Johnson, Benson, and Jones. Johnson provides protective service to shipper on traffic to Alabama, Florida, and Louisiana. Benson has provided protective service to the extent shipper used this carrier. |
| 53. (1304) Scovill Southern, Inc., Memphis, Tenn. Industrial fastening equipment and fasteners. | From its Atlanta, Ga. distribution center shipper has movements to specified points in Mississippi, Louisiana, and Arkansas. It also ships from Dallas, Tex. to Birmingham, Ala. The shipments are LTL and between 50 and 70 shipments move each week, with 10 moving to Arkansas, 30 to Louisiana, and 30 to Mississippi. Occasionally shipper's traffic moves from its smaller facility at Memphis Tenn. | Benson originates the traffic and interlines at Memphis, Tenn. with Jones to Northern Arkansas, Mercury to Central Arkansas and Red Line to Southern Arkansas. Gardner is used to some Arkansas and Mississippi points. Red Ball interlines at Memphis and delivers to Monroe and Shreveport, La. | Shipper expresses a need for the proposed second-day service to points in the destination territory. It prefers single-line service because essentially it is faster and it facilitates tracing. Customers have complained about truck stops and shipper has had difficulty with tracing. | Johnson, Jones, and Benson. Shipper has not investigated the availability of single-line services from Atlanta to points in the destination territory. It indicates that its customers have the right to decide the routing. |





Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 54. (1271) Crown Candy Corporation, Atlanta, Ga. Candy. | From Atlanta shipper has movements to Lake Charles, La. two or three times a week, to Baton Rouge and Shreveport, La., daily, and to Monroe, La. twice a week. It ships to Greenville, Miss. everyday and to Jonesboro and Brownwood, Miss. once or twice weekly. With respect to Arkansas points, it ships daily to Little Rock, several times a week to Fort Smith and Fayetteville, once or twice a week to Hirtherville, Camden, and Crossett, once, to Springdale, Osceola, Jonesboro, and Russellville, and two or three times a week to Texarkana and El Dorado. In Oklahoma it ships to Muskogee, Oklahoma City, and Tulsa once two or three times a week, weekly once to Chickasaw, Ada, Sand Springs, Stilwell, and Spencer. In Missouri it ships weekly each to Joplin, Neosho, Carthage, Rhoades, Berada, and Pineville, twice a week to Springfield, daily to St. Louis, and twice a week to Kansas City. It ships to Garland, Denison, and Orange, Tex. weekly; two or three times a week to Fort Arthur and Beaumont, twice a week to Paris; and daily to Dallas, Fort Worth, and Houston, Tex. It has several shipment daily to Chicago, Ill. The average weight of the shipments is [illegible]. | East Texas Motor Freight System, Dunton and Gardner have been used to Mississippi, but they have not rendered protective service. Shipper has also used the services of Alterman to Mississippi points and to Baton Rouge; Johnson to Mississippi and Louisiana points, Cardinal to Greenville, T.I.M.E. to Missouri points, and Ryder & Huber to Chicago. | Shipper wants protective service during the summer months or up to 50 percent of its traffic. It wants consistent second-day service to the furthest points to which it has shipments and next-day service to points nearer Atlanta than El Dorado and Little Rock, Ark. Crown cannot ship on Thursdays because the dry ice protection will not last throughout the weekend. It does not receive any protective service to Oklahoma, Mississippi, Missouri, and Illinois, and to points in Arkansas other than Little Rock. Even to Little Rock the only protective service it has is with dry ice. | Benson, Herrin, Jones, and Johnson. Shipper indicates that Jones is the only applicant proposing protective service. Before the hearing, shipper was not aware that Benson and Jones could interline to all named Missouri destination points. |
| 55. (1281) Calloway Mills Company, LaGrange, Ga. Floor covering. | From LaGrange shipper has movements to specified points in Louisiana, Mississippi, and Texas. In 1960 it shipped 900,000 pounds to points in Louisiana, 160,000 pounds to points in Mississippi, and 1.2 million pounds to points in Texas. It also has shipments to specified points in Arkansas and Missouri, including Kansas City. | Roadway, Georgia Highway Interlining with Mercury, West, East Texas, and Tennessee, Dixie Interlining with Red Ball, D. C. Interlining with Ryder, and Georgia Highway in single-line service. T.I.M.E., RCA, Beards, Alamo Express, and Movements have delivered its shipments to points in Texas. | Shipper wants 2-day service on LTL movements and 2-day service on TL movements to points in Louisiana, Texas, Arkansas, Mississippi, and Missouri. It maintains a warehouse at Dallas, Tex. but it would terminate the use of this facility if it received the service it desires to Texas points. Shipper introduced one transit time exhibit. The first covers a few of the shipments delivered between July 26, and October 12, 1961 to points in Texas and to Oklahoma City, Okla. The transit times, which include weekends, range from 1 to 12 days on the 12 shipments listed. The second deals with an unknown percentage of the 75 shipments delivered to shipper's Dallas warehouse between January 23 and March 8, 1960. Transit times, including weekends on all but one of the 20 shipments listed, range between 2 and 6 days, except for 11-days on one shipment. Shipper is not satisfied with the transit times. | Johnson, Benson, and Jones. Shipper will continue to use Georgia Highway to originate LTL traffic which would be interlined with applicants if the applications are granted. Tons speed is limited and in order to avoid congestion, shipper wants to limit the originating services to Georgia Highway. |
| 56. (1294) Cole Steel Equipment Company, Inc., Division of Litton Industries, Atlanta, Ga. Furniture. | From Atlanta to points in Mississippi, such as Jackson, Vicksburg, Harrisburg, Greenwood, Laurel, Hazel, Columbus, Greenville, Gulfport, Indianola, Meridian, and Clarksdale, and to Houston and Dallas, Tex. Also shipper has traffic moving from its Dallas and Houston facilities to its Atlanta facility. Shipments are made to points in Mississippi about twice a week with each shipment weighing approximately 150 pounds or in other words 300 pounds serve to Mississippi each week. About twice a month shipments weighing 500 pounds move to both Dallas and Houston. Also once a month shipments are received at Atlanta from both Dallas and Houston weighing about 900 pounds. After January 1, 1962, shipper expected its traffic to Mississippi to increase by two-thirds because of shipper's customers will not be able to obtain furniture from shipper's York, Pa. plant. | Ryder has been used to Jackson, Carrollton, Vicksburg, Laurel, and Meridian. Dixie to Jackson and Vicksburg, and Carolina, T.I.M.E., Georgia Highway, Interlining with Campbell at Birmingham, Ala., and Benton. | Shipper has received complaints from its dealers about transit times. Dixie informal shipper that its traffic was not desirable. Shipper has experienced difficulty in obtaining pickup service from Ryder and slow delivery service. It indicates that ordering carriers, except Johnson, render slow delivery service. | Benson, Johnson, and Jones. Shipper has used Johnson to Pascagoula, Miss. and considers its service as satisfactory. |
| 57. (1298) Crawford and Thompson, Inc., Atlanta, Ga. Carpet and padding. | From Atlanta to Jackson, Meridian, Columbus, Greenwood, Greenville, and Hattiesburg, Miss., and Shreveport, La. During the first 6 months of 1961 shipper had 43 movements weighing a total of 7,775 pounds. Each shipment weighed between 50 and 500 pounds and the average weight was 181 pounds. | Ryder, Cole, Benton, and East Texas. | Shipper has lost sales and several customers because of inadequate transportation. It has experienced slow pickup service with Ryder. Needs overnight service to the destination territory is desired. | Benson, Johnson, and Jones. The services of Benson and Johnson have been utilized and are found to be satisfactory. |
| 58. (1297) Carlos Hamner, Inc., Gibbsboro, N.J. (Atlanta, Ga.) Electrical control, control gear equipment and electrical supplies. | From Atlanta to points in Louisiana, and Mississippi, and to Dallas, Tex. The average size of the shipments is between 50 and 70,000 pounds, and the average tonnage a month is about 140,000 pounds. Only small shipments move into the Texas area with heavier shipments moving to points in Louisiana and Mississippi. | Ryder has been used to Monroe, Jackson, Shreveport, and Baton Rouge, La. East Texas and Benton are used to Mississippi and Louisiana. Thompson is used to Dallas. | Shipper often requires high volume, open-top, or oversize trailers. It indicated generally that it has experienced difficulty with Ryder's pickup service. Shipper is not receiving satisfactory delivery service and Ryder was unable to locate a shipment which was being traced. | Benson, Johnson, Jones, and Strickland. Shipper has used the services of Johnson and Benson and considers them as satisfactory. Benson would be used to Louisiana and Mississippi points; Johnson to Louisiana points, and Jones to Arkansas points. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 59. (102) Columbus Mills Inc., Columbus, Ga. Carpeting and synthetic woolen goods. | From Columbus to points in Louisiana, Texas, and to Memphis, Tenn. During the first 6 months of 1966 shipper had outbound tonnage of 477,948 pounds to Dallas, Tex.; 781,011 pounds to Houston, Tex.; 180,481 pounds to other Texas points; 116,780 pounds to Louisiana points; and 173,250 pounds to Memphis, Tenn. Shipper moves about 20 million pounds a year with better than 10 percent of this total volume going to points in the combined destination territory. The traffic consists of both TL and LTL shipments. Shipper reported to expand its facilities in 1967. It also has movements to Waco, Tyler, Fort Worth, San Antonio, and El Paso, Tex. | To Memphis the services of Georgia Highway Interlining with East Texas have been used. Shipper has used other unspecified carriers. | Shipper has difficulty in obtaining equipment during peak periods. Roadway was not able to supply a sufficient number of vehicles in the last months of 1965 and the early part of 1966. Shipper stated that Johnson refused to handle one L.C.L. shipment but specifics were not given. | Service. |
| 60. (106) National Aniline Division of Allied Chemical Corporation, Atlanta, Ga. Dyes, chemicals, and detergents | From Atlanta to points in Louisiana and Texas. Shipper has traffic moving daily to points in these two States. The average shipment weighs 900 pounds and it has shipments weighing up to 5,000 pounds. Shipments move to New Orleans, Baton Rouge, Lake Port, Hodge, Bogalusa, Oak Point, West Monroe, Elizabeth, Springhill, and Montrose, La. and Houston and Orange, Tex. | To Louisiana shipper has used Johnson, Hyder, Dixie, and East Texas. To Texas it has used East Texas. | Shipper wants direct single-line service. Time in transit is important because shipper's customers maintain limited inventories. Shipper allows up to 4 days for delivery from Atlanta to points in Louisiana. It has experienced difficulty in obtaining late pickup service from Hyder after this carrier has made its regular pickup. | Service. The single-line service rendered by East Texas is described as satisfactory. Service's services have not been utilized. |
| 61. (106) The Kendall Company Atlanta, Ga. Clothing | From Atlanta to Asheville, Alexandria, Baton Rouge, Bamboo City, Church Point, Crowley, Duffyden, Donaldsonville, Jennings, Lafayette, Lake Charles, Monroe, Morgan City, New Iberia, New Orleans, and Shreveport, La.; Memphis, Tenn.; Little Rock, El Dorado, Camden, Texarkana, and Hot Springs, Ark.; and Baytown, Beaumont, Dallas, Fort Worth, Galveston, Houston, and Waco, Tex. Shipments weigh between 75 and 800 pounds with the average shipment weighing 175 pounds. Occasionally it will have shipments weighing up to 10,000 pounds. Shipments are made to points throughout Louisiana. | Johnson, Hyder, Dixie, East Texas, [illegible] interlining with Mercury. Gus Lines have also been used. Johnson is used direct to New Orleans and in interline service to other points. | Shipper wants consistent 2-day service to New Orleans and Memphis. On one shipment to Mansfield, La. originated by Johnson and delivered by Red Ball, the latter carrier did not render a satisfactory transit time. | Service and Johnson. Shipper has not investigated the availability of single-line service from Atlanta to the named Texas points. It describes the Mercury-United interline service as reasonably good and indicates that Johnson's service is satisfactory. Shipper can assure that it could originate shipments by Johnson for interline at New Orleans with Service, Red Ball and Kenan. |
| 62. (131) Consolidated Merchandising Corporation, Atlanta, Ga. Sewing machine furniture, and electric items | From Atlanta to points in Texas, Louisiana, and Arkansas. Shipments to Louisiana are almost on a daily basis. Shipper has between 90 and 100 shipments a month to points in these States and the average weight of each shipment is about 150 pounds. Shipper expects a 25 percent increase annually in its business. It has shipments to points throughout Louisiana (about 65 points) and to points in a portion of Texas (as far west as Midland and Odessa). Also shipper has movements to points in Mississippi. | T.I.M.E., East Texas, Johnson, and Transcon. Dixie interlining with Red Ball is used to Shreveport, La. | Shipper prefers single-line service. It has experienced difficulty in obtaining adequate service from the carriers which interline with Johnson at New Orleans, La., and delivery to points beyond. For a 6-month period shipper had difficulty in obtaining pickup service from Hyder usually invoicing 3 or more days before pick up. After complaining to the president of Hyder, it received satisfactory service. | Service, Roadway, and Johnson. Shipper has confidence in the services of Johnson and Roadway. Except for Roadway's service to Texas, shipper describes the service rendered by these two carriers as satisfactory. The service rendered by Johnson to New Orleans is satisfactory but shipper wants "back up" service available. Shipper indicates that five carriers offer single-line service to New Orleans. Even if the applications are granted, shipper would still have to use interline service to one of the named points to which it has traffic moving. |
| 63. (132) The Lonsdale Furniture Company, Atlanta, Ga. Lumber and [illegible] | From Atlanta to points in Louisiana, Texas, Arkansas, Memphis, Tennessee, and St. Louis, Mo. Shipper has movements averaging 500 pounds each almost daily to the Dallas, Fort Worth, Houston, Waco, Beaumont, Corpus Christie, Galveston, Laredo, El Paso, and other Texas points. It ships regularly to New Orleans and Shreveport, La. Also it ships regularly to Memphis, Tenn., and St. Louis, Mo. Between 60,000 and 70,000 pounds moves weekly to points in Texas and Louisiana. | To Texas, East Texas, Roadway and once a customer requests Hyder. To Louisiana, Johnson is used, and to St. Louis, Gordons and Hyder are used. To points in Louisiana other than New Orleans Red Ball is used. | Shipper desires LTL to use Hyder. It has experienced damage in delivery and pickup with this carrier. Time in transit is important because often shipments move in connection with advertised sales. Shipper has experienced pickup difficulties with Gordons. As a result, shipper often limited its use of this carrier. Shipper wants more than one carrier authorized to serve the named points so that it will be in a position to obtain better service. If the authority sought is granted shipper would terminate its use of RDH. It allows 1 or 2 days for delivery to points in Louisiana by RDH. East Texas consistently has not rendered satisfactory delivery time to named points in Texas. | Service, Roadway, and Johnson. Shipper uses the services of Johnson and Roadway. Except for Roadway's service to Texas, shipper describes the service rendered by these two carriers as satisfactory. The service rendered by Johnson to New Orleans is satisfactory but shipper wants "back up" service available. Shipper indicates that five carriers offer single-line service to New Orleans. Even if the applications are granted, shipper would still have to use interline service to one of the named points to which it has traffic moving. |
| 64. (133) Elbert Associates, Atlanta, Ga. Control instruments | From Atlanta shipper has one LTL shipment a month to Baton Rouge, La. The shipments weigh between 100 and 1,000 pounds each. | Hooten and Dixie originate this traffic. | Shipper wants second or third day, single-line service to Baton Rouge. Its loading facility consists of two docks. | Hooten. Shipper indicates that it has not used direct single-line service to Baton Rouge because it is not aware of any. |





Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 61. (106) Schulien Corporation, College Park, Ga. Chemicals and battery acid, both in containers and polyethylene bags. | From Atlanta to Baton Rouge, La. and Dallas, Tex. | Private carriage as used to Baton Rouge, Indiana, and East Texas are not to Dallas. | Shipper wants to supplement its private carriage to Baton Rouge during its peak period between August and March. It prefers single-line service to make the acid is highly susceptible to damage with excessive handling. | Denton. Shipper indicates that the services of Service and East Texas to Dallas is "very satisfactory." |
| 66. (106) Buffalo Tank Company Atlanta, Ga. Air compressors, paint spray equipment, parts, liner and other equipment. | From Atlanta to Jackson and Brookhaven, Miss., and Birmingham, Ala., with a frequency of between six and eight shipments collectively a month with an average weight of 15[illegible] pounds. | [illegible], Dealers, Hyder, and Gordons. Shipper also uses Jones to Jackson and Brookhaven at consignee's request on shipments weighing less than 100 pounds. | Shipper wants 1-day service to the aforementioned points. It has received complaints from its customers in Mississippi. A customer located at Jackson complained about transit times. | Strickland. Shipper is satisfied with the existing services from Atlanta to Birmingham. It would not recommend any specific improvement at this time. It has not received a 2-day map to the map of requested service on traffic to Jackson or Brookhaven. Shipper has not used Brookhaven since it was not aware that Hyder would serve this point. |
| 67. (163) Swift Manufacturing Company, Columbus, Ga. Textile fabrics. | From Columbus it ships 80,000 pounds a month both to Dallas and Fort Worth, Tex. Shipper has an average of 35 LTL shipments a month to the above points. It plans to construct a new mill and expects the volume of traffic to increase by 50 percent in 1967. Shipper also has an interim movements a week to Houston, Tex. | Dixie, Fox Hall, and Roadway. Shipper interlining with East Texas to Dallas, Fort Worth, and also points beyond. Dixie interlining with Service to Houston. Dixie interlining with Red Ball to Dallas and Fort Worth. | Shipper wants direct single-line service to Dallas and Fort Worth. It has experienced difficulty in obtaining equipment from Roadway on Dixie and is not satisfied with this carrier's transit time. Shipper thinks its use of Hyder because its time transit traffic. It is serviced by all three carriers to Dallas. Shipper prefers single-line service. It wants 2- to 3-day service to the destination points. The existing interline service accordin is not satisfactory. | Support. Shipper is primarily concerned with service to Dallas and Fort Worth and they servicing areas. It would not recall an occasion when Roadway was unable to furnish equipment to a of import moving to Fort Worth or Dallas. |
| 68. (166) Kendall Company, Chicago Division, Chicago, Ill. Regional drawings and related products. | From Shipper's Atlanta, Ga., warehouse to points in Mississippi. Between January and June 1966 it had shipments to Jackson, Meridian, Greenville, and Greenwood, Miss., and occasionally to Dallas and Houston, Tex. Almost all of shipments weigh less than 1,000 pounds. | Dixie, Hyder, East Texas, and Gordons have been used on an as-needed basis to Mississippi. East Texas has been used on shipments to Texas. | Shipper claims 4 days for delivery to Mississippi points. Transit time is important since shipper's customers have limited storage facilities. It wants 1-day service to Mississippi. Shipper does not receive complaint about value a month regarding transit times. | Johnson, Bowman, and Jones. Shipper was [illegible] that at had the services of Dixie, Hyder, and Johnson to Mississippi. |
| 69. (167) George E. Failing Company, Atlanta, Ga. Drilling supplies. | Inbound shipper receives at Atlanta between 6 and 11 shipments a month from Enid, Okla., and Dallas, and Houston, Tex. with weights varying between 300 and 800 pounds. | Hyder, East Texas, Gordons, Overnight, Gordons, Roadway, Transcon, Texas, Interstate Express. | Shipper expresses a need for service it's present consolidation service from Dallas and Houston excluding Tuesday and Saturday. Consignee or shipper requires the supplies to repair and service drilling rigs, time in transit is important. Shipper introduced a transit time study of 17 shipments delivered between 2-1/2 and 4 days for 26 shipments moved from Houston, three from Enid, and one from Dallas. Including weekends the average transit time was 4.7 days. | Strickland. Shipper considered satisfactory service from Enid on shipments handled in interline service by Transcon. |
| 70. (168) Fibre Containers Products, Atlanta, Ga. Reproduction and copying equipment, sensitized reproduction paper, chemicals, supplies and parts. | From Atlanta to 230 customers located at specified points in Mississippi and Louisiana. About 50,000 pounds a month moves outbound from Atlanta. The shipments weigh between 30 and 1,000 pounds. The monthly average number of outbound shipments to all points is 600. About 60 shipments move collectively to points in Mississippi and Louisiana each month. Shipper's products are susceptible to damage and requires prompt, dependable and expeditious delivery because of their perishable nature. Sensitized paper is date-marked and must be delivered and used promptly. | Hyder, Dixie, and Johnson. | Shipper claims 4 days for delivery to destination points involved. It is not satisfied with Hyder's service generally because of pickup problems. Dixie which performs overnight service, does not make late pick-ups after 2:30 p.m. for interline orders. Shipper expresses a need for second-morning service to the points applicants will serve direct and third-morning service to the other destination points. | Denton, Johnson, and Jones. Johnson handles shipper from St. Louis, Mo., traffic satisfactorily. Shipper has available along with Johnson, the services of Hyder, Dixie, Hooten, and Denton to New Orleans. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 7). (170) Flue Products, Augusta, Ga. County | From shipper's Atlanta and Augusta, Ga. warehouses to about 7,500 accounts located in Mississippi, Louisiana, Missouri, Oklahoma, Arkansas, Tennessee, and Texas. In 1963, shipper moved 535,000 pounds to Mississippi; 530,000 pounds to Louisiana; between 95,000 and 100,000 pounds to Arkansas; 100,000 pounds to Texas; 50,000 pounds to Missouri; and 10,000 pounds to Oklahoma. Shipper is comprised of four subsidiary companies. The products of all of the subsidiaries are manufactured together. | REA is used from Atlanta and Augusta. Protective service is rendered by Candell (according with Arkansas to some points in Louisiana, Mississippi, and Alabama. Candell, Roadway, Herron-Wilson, Overnight, Johnson, and Brannon are used to originate traffic from Augusta. Candell and Brannon are used to originate most of the traffic at Augusta for interlining at Atlanta. | Shipper requires protective service above 80 degrees Fahrenheit on 60 percent of its products. Time is crucial is important because of the perishable nature of the commodity and also because some of the candy is packaged to be sold for certain holidays. REA service is not satisfactory because of time in transit, because items in a shipment are delivered separately, and because of damage. REA does not render protective service. Shipper is not satisfied with the interline service rendered by Alterman because of transit time and routing difficulties during its busy seasons in the last part of January shipper receives about 30 complaints a day regarding delayed deliveries. Shipper has limited dock space. | Brannon, Johnson, and Jones. Jones proposes to serve directly Atlanta but not Augusta. It proposes to render protective service. Shipper is satisfied with the service Candell renders from Augusta to Atlanta. It does not have LTL protective service to Arkansas, Missouri, Oklahoma, and Kansas. During warm weather shipper has used dry ice and insulated containers but with this service it can only ship to direct points in Louisiana and Mississippi and cannot ship after Tuesday since this type of protection lasts only 3 or 4 days. Protective service is required between May and August. Dealing mainly (Valentine, Valentine's Day, Easter, and Mother's Day) during which period protective service is not required, represents 40 percent of the sales of the 40 in four subsidiaries. Shipper's present needs were principally for service to Louisiana and Mississippi. Johnson's service to New Orleans is satisfactory. Shipper recommend using the service of Red Texas Interline with Brannon in June 1965, the service involves the use of dry ice in insulated trailers. Shipper had not experienced any difficulty with the several shipments handled in this manner. Shipper does not believe that Brannon could originate traffic at Augusta and interline it at Memphis, Tenn., with Jones. However, Brannon does not render LTL protective service. |
| 8). (171) Gordon Foods, Atlanta, Ga. Items used in vending machines such as potato chips, candies, and peanuts. | From Atlanta shipper has warehouses to Baton Rouge, Lake Charles, Monroe, and Shreveport, La.; and Meridian (one shipment a week), Jackson (three or four shipments a week), Greenville (three shipments a month), Hattiesburg (one shipment every 10 days), Greenwood (once every 2 weeks), Clarksdale (once a week), Indianola (twice a month), Philly (once a month), Vicksburg, Grenada, and Vicksburg, Miss. (occasionally to these last three points). Shipper's average shipment weight about 500 pounds. If it received the proposed service, shipper would have movements from Atlanta to specified points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma. It would ship at least once or twice a week to points in these States. Shipper expected the volume of traffic to increase by 25 percent in the year following the hearing. | Johnson, Brannon, Jones, Ryder, and Hunt Trans. Private carriage is used on 75 percent of its traffic. Points in Arkansas, Missouri, Kansas, Illinois, and Oklahoma are served by private carriage with common carriers handling only that traffic which it is not economically feasible for shipper to handle. Shipper handles one half of its own equipment to Memphis, Tenn. where it is interlining for delivery to points in Louisiana and Mississippi. | Time is crucial is important to shipper because a number of the items it ships have a "Sell-by" of 30 days from their date of manufacture. Shipper prefers single-line service. It has lost some customers at points in Louisiana because of the inadequate service and transportation problems beyond New Orleans. Customers have also been lost in Mississippi. Shipper had experienced a 2 week delay in shipping delivery by a mill carrier to New Iberia, La. | Brannon, Jones, and Johnson. Shipper has used the services of Brannon and Johnson with satisfaction. It did not interline any bills of lading to other line pickup carrier on the part of Ryder. The one Ryder bill shipper received at the hearing demonstrated that Ryder made a pickup on the proper day. Service to New Orleans is satisfactory. Shipper would have no objection to using the single-line service of Brannon. |
| 9). (172) The Procter & Gamble Company, Cincinnati, Ohio. Household soaps and detergents. | From shipper's Forest Park, Ga. distribution warehouse (Atlanta, Ga.) traffic moves to Jackson, Miss.; and to Shreveport and Monroe, La. To Jackson it has an average shipment weighing between 800 and 1,000 pounds; to Shreveport it has 4 shipments a month with the average shipment weighing between 500 and 1,000 pounds; and to Monroe it has 5 shipments a month with an average weight the same as those described above. Shipper is interested in service generally to points in Mississippi and Louisiana, with the exception of New Orleans. Representative points are: Columbia, Greenwood, Hattiesburg, Meridian, Vicksburg, Greenville, Indianola, and Yazoo City, Miss., and Baton Rouge and Lake Charles, La. One shipment a week moves to each of the representative points. | Brannon, Jones, and Johnson. Shipper uses Brannon and Johnson with satisfaction. It would not interline any bills of lading to other line pickup carrier on the part of Ryder. | Brannon, Jones, and Johnson. Shipper has used the services of Brannon and Johnson with satisfaction. It did not interline any bills of lading to other line pickup carrier on the part of Ryder. The one Ryder bill shipper received at the hearing demonstrated that Ryder made a pickup on the proper day. Service to New Orleans is satisfactory. Shipper would have no objection to using the single-line service of Brannon. |





Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 6). (167) Gale House of Music of Savannah, Ga. Savannah, Ga. Pianos and organs | Inbound to Savannah shipper has traffic moving from Greenwood, Miss., and Fayetteville, and Conway, Ark. It receives between 15 and 12 LTL shipments a month from Greenwood and Conway and about 1 a month from Fayetteville. Shipper expected an increase in its business of 20 percent in the year after the hearing. | Tramcon, Goodman, Harper, Taylor, and Bonham. | Shipper wants direct single-line service by Bonham from Greenwood. It expresses a need for second-day delivery from Greenwood and third-day delivery from Fayetteville and Conway. Time in transit is important because shipper carries an limited inventory. Excessive handling can result in shipper having to return the piano. Since shipper does not have a loading dock it requires that the dock it requires that the delivering carrier have a hydraulic tailgate on its equipment. A transit time study on six shipments from Greenwood to Savannah was introduced. Goodman originated three shipments and Taylor originated the remaining three. Shipper was the delivering carrier in all of the shipments. Tramcon was the bridge carrier on the shipments originated by Taylor. Including weekends the transit time were between 4 days and 8 days. | Brannon and Jones. Shipper has used the services of Brannon on a delivery carrier. Jones would have to interline at Athens, Ga. for delivery to Savannah by the connecting carrier. |
| 7). (168) Maryland Baking Company, a division of the Maryland Cup Company, Atlanta, Ga. Cones, paper products and plastics | From Atlanta to points in Mississippi in LTL quantities. Shipments weigh from 500 pounds to 5,000 pounds. The average weight is usually 1000 pounds. Representative points to which shipper had traffic moving in 5/66, are Batesville (2 shipments), Clarksdale (3 shipments), Columbus (5 shipments), Greenwood (12 shipments), Hattiesburg (5 shipments), Jackson (35 shipments), Laurel (6 shipments), Meridian (11), and Vicksburg (1). Shipper indicates that it has movements to all points in Mississippi. | Brannon, Johnson, Liggett, Deaton, Gordon, Ryder, and Blair. Private carriage is used on shipper's cones to Mississippi. | Transit time is important. Shipper indicates that unless it is able to obtain better service from Atlanta to Mississippi it will have to set up distribution warehouses at points in Mississippi. It expresses a need for the proposed 2- or 3-day service. Many complaints have been received with respect to existing service. | Brannon, Johnson, and Brannon. Shipper has used the services of Johnson and Brannon and found them satisfactory. |
| 8). (169) Scottish-Atlanta Inc., Atlanta, Ga. Industrial furnishing equipment and fasteners | From Atlanta to points in Louisiana, Mississippi, and Arkansas. Shipper moves about 10,000 pounds a week to points served by Red Ball in these three destination States. The shipments weigh between 50 and 4,000 pounds. Shipper expects to have/move to increase 10 percent annually. Between 7/1/65 and 5/31/66 it had shipments from Atlanta to Baton Rouge, Pineuburg, Shreveport, Ponchatoula, Alexandria, Bastrop City, Monroe, Crowley, Lake Charles, Ruchitoches, Port Path, Diamond, Bastrop, Morgan City, Lafayette, Jonesville, and Alexia, La.; Pine Bluff (two shipments during this period), and Little Rock (one shipment during this period), Vicksburg, Natchez, and Gulfport, Miss. | Ryder, Johnson, Brannon, Blair, Cole, Deaton, T.I.M.E., REA, Transcon, East Texas, Georgia Highway, and Red Ball. | Shipper expresses a need for the proposed overnight service to Jackson, Miss., and second-day service to the majority of Louisiana points. It prefers single-line service because it facilitates tracing and avoids the delays inherent in interchanging. A transit time study was introduced covering 120 shipments which moved between 7/1/65 and 5/31/66. This traffic moved to points in Arkansas, Louisiana, Mississippi, and Texas. It was handled in interline service with Ryder and Brannon originating the traffic and Red Ball delivering it. Shipper was not sure whether it experienced all of the particular traffic interlined with Red Ball during this period. With Ryder the interline occurred at Jackson, Miss. and with Brannon the interline took place at Bastrop, La. Including weekends, the majority of the shipments to Baton Rouge were delivered in 5 or less days; to Shreveport, a majority delivered in 5 or less days; to Monroe and Alexandria one half of the shipments were delivered in 5 or 6 days; to other Mississippi points the majority of shipments were delivered in 5 or 6 days; and to Little Rock, a shipment was delivered in 6 days. The majority of all the shipments lifted were delivered in 5 days or less but some were not delivered for up to 9, 10, and 11 days. | Red Ball. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 97. (186) Sealtest Corporation, a Division of Inford Chemical Corporation, Chamblee (Atlanta), Ga. Cleaning preparations | From Atlanta to Alexandria, Baton Rouge, Shreveport, Monroe, Dubach, Homer, Lake Providence, Minden, Opelousas, Springhill, and Vidalia, Louisiana, and Hammond, Meridian, Natchez, and Summerville, Miss. The average weight of the shipments is 450 pounds. Between 50,000 and 150,000 pounds moves from shipper's plant each month. Between 1/1/55 and 6/1/55, shipper had about 250 movements to specified points in Louisiana | Eastern, T. I. P. I., Jonesboro, Garrison, East Texas, Woodway, and Red Ball. Jonesboro is used to New Orleans. Eastern originates shipments and interline with Red Ball at Jackson, Miss. Red Ball is used as a delivering carrier. | Shipper wants faster single-line service to points in Louisiana and Mississippi. It has received complaints on the transit times on shipments to Louisiana. Second- or third-morning service to points in Louisiana would certainly accommodate shipper's needs. It prefers single-line service. Shipper introduced a transit time study of traffic handled to the destinating territory moving on interline service by Red Ball and Jackson or Dixie or line. The study covers shipments moving between 7/1/55 and 8/1/55. Shipper was not certain that all of the pertinent shipments handled by Red Ball were included. Including weekends, 6 to 9 days of the shipments handled by Eastern or Dixie interlining with Red Ball were delivered in 5 or less days. One half of the shipments handled by this interlining with Red Ball were delivered in 5 or less days. Shipper maintained that its study shows that it is receiving an average transit time from the originating carriers of 3.61 days while it was receiving an average transit time of 2.1 days from the delivering carrier, Red Ball. | Red Ball and Jackson. Shipper is satisfied with the service rendered by Red Ball and Jackson. It was not aware of a single-line service from Atlanta to Shreveport |
| 98. (191) Harold Reynolds Company, Columbus, Ga. Cotton piece goods and synthetic cotton fabrics | From Columbus to points in Louisiana, Arkansas, Texas, and to Memphis, Tenn. Shipper has weekly movements to New Orleans, Shreveport, Baton Rouge, and Monroe, La., Memphis, Texas, Little Rock, Pine Bluff, Ark., Shreveport, Texarkana, and Fort Smith, Ark. Shipments weigh between 50 and 1,200 pounds. Arkansas and Louisiana points other than those described above are also served by shipper. To New Orleans shipper has between 1 and 3 movements a week weighing a total of 500 pounds, to Shreveport, Monroe, and Baton Rouge it has 1 shipment a week to each point with the shipments weighing between 50 and 500 pounds, to Memphis it has about 25 shipments a week with each shipment weighing about 100 pounds, to Little Rock and Pine Bluff, 1 shipment a week to each point with each weighing up to 500 pounds, to Texarkana, 1 shipment a week weighing 500 pounds, to Fort Smith 25 shipments a week each weighing between 500 and 1,500 pounds and to Pine Bluff 1 shipment a week to each of its 2 or 3 customers located there with each shipment weighing between 50 and 1,500 pounds. | Eastern, Dixie, and Woodway. Eastern is used to Shreveport and is interline to points in Arkansas. Dixie is used to New Orleans, Monroe, and Baton Rouge. | Transit time is important to shipper because its customers in its trade territory are not competitive. Shipper expresses a need for the services overnight service to New Orleans, Baton Rouge, Shreveport, Memphis, and second-morning service to outlying points in Louisiana and to Arkansas. Shipper claims 3 days for delivery to points in the destination territory. It has received complaints about transit time to New Orleans. Shipper was not satisfied with the service rendered by Dixie to Memphis and its replacement, Eastern, apparently is not performing satisfactorily. Dixie's service to New Orleans is also described as unsatisfactory. Shipper refuses to use Johnson because this carrier damaged shipper's facility and according to information is known to pay the full amount of the claim. | Harris |
| 99. (192) Columbus Foundry, Machine, Iron & Chemical Works, Inc., Chattanooga, Ga. Cotton linters | Shipper has had difficulty in obtaining joint service where it requests it. Shipper allows 5 days for delivery to points in Texas; 3 days are allowed for delivery to Mississippi; and it wants overnight service; 2 or 3 days are allowed to points in Louisiana and it wants second-morning service, 4 to 10 days are allowed to Arkansas and Missouri and it wants third-morning service, and 4 days are allowed for Arkansas and it wants overnight service. Shipper stopped using Dixie to Mississippi because 3 months before the hearing Dixie increased them $1.613 and want to handle this traffic. Dixie is not used as a delivering carrier because about 3 years before the hearing some unnamed originating carrier informed shipper that Dixie would not accept interline shipments. Shipper has received complaints regarding the existing service. It has experienced problems in obtaining new service from GT & WC. | Eastern, Georgia Southern, Dixie, Monroe, GT & WC, Dixie, Baggett, and customers equipment. | Eastern. Shipper has satisfactory and wants a service. It is alleged that Eastern can serve Chattanooga under its existing authority to serve points within 10 miles of Chattanooga, Tenn. |







Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 95. (190) Monarch Citrus Products Company, Doraville, Ga. (Atlanta, Ga.) Preparations and beverage syrup in glass containers | From Doraville about 15 LTL shipments a month move to Louisiana points such as Homer, Monroe, Ruston, and Shreveport. Shipper also has one TL movement a month from Doraville to its Dallas Tex. warehouse. It also ships to Little Rock, Pottsgrove, and El Dorado, Ark., Kansas City, Pittsburgh, and Wichita, Kans., Clarksdale, Greenville, Indianola, and Shelby, Miss., St. Louis, Mo., Hollister, Oklahoma City and Ft. Sq., Okla., and Dallas and Grand Prairie, Tex. | To Louisiana points shipper uses East Texas, Gardner, and this interlining with Red Ball. On shipments to Dallas shipper stopped using East Texas and began using Woodway | Transit time is important because shipper's customers do not order until they have an immediate need for its product. To Louisiana points, shipper wants 2-day service. It wants 2-day service to Arkansas points. Single-line service is preferred. Shipper is not satisfied with the transit time rendered by East Texas to Louisiana points. It expresses a need for joint service proposed 2-day service to El Dorado so as to obviate the need for serving this point from Dallas. About 50 percent of shipper's traffic moves in glass containers and requires protective service in freezing weather | Denton, Red Ball, and Jones. |
| 96. (189) Nancy Company, Forest Park (Atlanta, Ga.) Cotton gin machinery and parts thereof | Inbound shipments are received at Forest Park from Dallas, Tex. Outbound shipments move from Forest Park to shipper's plant at Dallas. Shipper has about 15 movements a month from Dallas during the cotton harvest and ginning season which lasts for about 45 days between August and October. The shipments weigh between 500 and 2,000 pounds each. It has four shipments a year to Dallas with an average weight of 1,000 pounds. Shipper is primarily interested in the southbound traffic. | United interlining with Nancery is used on outbound traffic to Dallas. Three same carriers handle shipper's inbound traffic. East Texas, Woodway, and Gardner have handled some of shipper's traffic. Georgia Highway sometimes delivers shipments to Atlanta interlining with United. | Transit time is important because shipper's customers are not able to process cotton and therefore lose business while their gins are not operational. Shipper expresses a need for the proposed one-day service from Dallas to Atlanta. Shipper introduced a transit time study of 20 shipments delivered between 7/13/55 and 10/3/55. The shipments moved from Dallas to Atlanta and were handled by Nancery interlining at Birmingham, Ala., with United. The study shows that, including weekends, 10 of the shipments were delivered in 3 or less days (2 were delivered in 3 days). The remaining nine were delivered, again including weekends, in 4 or 5 days. | Strickland. Shipper knows of six carriers which render single-line service between Atlanta and Dallas but it believes that some of them decline on Saturdays, Sundays, or holidays. Even if the application is granted shipper would, to a degree, divide the traffic among the authorized carriers. |
| 97. (190) Dixie Pre-Cast Division, Stone Mountain, Ga. Automotive replacement supplies | From Stone Mountain, which is located 16 miles east of Atlanta, Ga. to Jackson, Greenwood, and Greenville, Miss. Shipper has 60 movements a month weighing between 50 and 2000 pounds each, to these three Mississippi points. | Boston, Gardner, Baker, Cole, and Blake. Shipper now serves on a delivery carrier on some shipments to points in Mississippi. | Shipper wants overnight service to the three Mississippi points. It is not satisfied with the existing service. Shipper introduced a transit study of shipments on which it had received complaints. The shipments moved between 3/18/55 and 4/16/55. Four of the shipments moved to Greenwood and four to Jackson. Boston handled six of the shipments requiring transit times of 4, 5, and 6 days. Gardner handled the two remaining shipments rendering 3- and 4-day service. The delivery dates were obtained from the carrier handling the traffic. | Strickland. Shipper supports Strickland for exclusively from Atlanta, Ga., and if Stone Mountain is not located in the commercial zone of Atlanta it should not support this application. |
| 98. (202) Thomas Electric Manufacturing Company, Atlanta, Ga. Electric motors | From shipper's Atlanta warehouse between 1/1/55 and 6/30/55 it had 11 shipments weighing a total of 5,000 pounds to Houston, Tex., and 1 shipment weighing 170 pounds to Fort Worth, Tex. From its Houston warehouse shipper had 101 movements weighing a total of 60,000 pounds to points in Georgia, Florida, and North and South Carolina during this same period. The shipments from Houston were interlined at Atlanta. Additionally, during this period 22 shipments weighing a total of 11,000 pounds moved from Houston to points served by Baggett. Shipments weigh between a minimum and 4,000 pounds. Shipper's traffic also moves from its warehouses in Greenville, S. Tenn located at Birmingham, Decatur, and Gadsden, Ala., Knox and Columbia, Tenn., and Chattanooga, Tenn. Only from 10 percent of this traffic between Houston and Atlanta moves between the warehouses. | From Atlanta to Houston shipper has used Baker, Eastern, Woodway, East Texas, Gardner, and Nancery. United originates traffic to Houston and interlines with Nancery at Birmingham. These same carriers are used in the reverse direction from Houston to Atlanta. | Shipper wants direct single-line service to and from Houston and Fort Worth, Tex., and Atlanta, Ga. Shipper indicates that the interlining service of Nancery and United has not been satisfactory and that Gardner's service is not entirely satisfactory. East Texas is not allowed by shipper for an unspecified reason to serve the Houston territory. Baker's delivery time has not been satisfactory. Shipper received customer complaints regarding delivery time on 40 percent of the aforementioned shipments. | Baggett. Shipper is aware that Baggett has direct single-line service from Fort Worth to Atlanta. It has single-line service between Houston and Atlanta and Houston from Hastings, Baker, Smith, East Texas, and Transcon. Shipper's use of Baggett's service and Gardner it is satisfactory. |

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Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 64. (1313) Kraft Foods Division, National Dairy Products Corporation, Garland, Tex. Foodstuffs and animal and poultry feed | During the first 6 months of 1954 shipper had movements (1) From Decatur, Ga. (Atlanta), to Baton Rouge, New Orleans, and Lafayette, La., Columbus, Greenville, Greenwood, Gattlesburg, Jackson, Laurel, Pascagoula, Vicksburg, and Indianola, Miss., Memphis, Tenn., Garland, Tex., and Springfield, Mo.; (2) from Lakeland, Fla., to Houston and Garland, Tex., and to Springfield, Mo.; (3) from Garland, Tex. to Birmingham, Mobile, and Montgomery, Ala., Decatur and Douglasville, Ga., and Miami, Fla.; and (4) from Springfield, Charlotte, Goldsboro, and Shelby, N.C., Kingsmount, Jacksonville, and Miami, Fla., and Knoxville and Nashville, Tenn. Shipments move primarily in volume or TL lots in straight or mixed loads either direct to one consignee or to two or more consignees. | From Decatur shipper uses private carriage, Refrigerated Transport Eagle interlining with Colonial, Tompkins Hyder, Railroad, TOFC, and Johnson. From Lakeland shipper uses Refrigerated Transport, Wilson Bros., Commercial, Alterman, and Railroad. From Garland shipper uses Mercury, private carriage, Railroad, Jones, Roman, Gardner, and Norris. From Springfield shipper uses private carriage, Railroad, Jones, Campbell, Wilson Bros., Mullaney, and Ventura Gillette. | Shipper requires protective service from both heat and cold on most of its products. It indicates that trailers equipped with mechanical refrigeration are required for a portion of every shipment moving from Atlanta. Reportedly existing refrigerated service carriers do not have sufficient equipment to meet shipper's needs from Atlanta. Shipper wants first-morning service to points within 400 miles of its facilities. | Roman, Norris, and Jones. Hyder has established a special products division with mechanically refrigerated equipment. Shipper was generally satisfied with the interline service of Jones and Roman from Garland. However, Roman discontinued using mechanically refrigerated equipment. If its application is granted Roman would reinstitute refrigerated service. |
| 65. (314) Augusta, Ga. | See Shipper under Missouri heading. | | | |
| 66. (345) John Sexton & Co., Chicago, Ill. Canned foodstuffs, cleaning compounds, and paper products | Ships from Atlanta warehouse to points in Mississippi. Most traffic moves during months of August, September, and October. Institutional sales. | Dixie, Brunwell, G.T.A., Johnson, Norton, Roman, Viking, Hyder, West Brom., United Robinson.—All shipments two-line service except to Jackson and Greenville, Miss., where Dixie used direct. | Poor transit times, 5 days delays to one customer when member of a chain organization can jeopardize the entire account. Small hotels and schools maintain small inventories. Problems with trucking. | Roman, Johnson, and Jones. |
| 67. (348) Continental Can Company, Inc., Atlanta, Ga. Polyethylene film | From shipper's Columbus, Ga. plant to its Rossmont facility it moves weekly shipments weighing between 2,000 pounds and 5 tons. Also shipper has movements from Columbus to points in Texas, including Houston, Dallas, and Fort Worth, Tex. and to points in Louisiana. Shipper also has some moves from Rossmont to Columbus. | Cole, Dixie, and Airlines. Service—Interline service. | Desires second-morning delivery. Uses Dixie direct-line service. Transit times range from 2 to 6 days with most shipments in transit 4 to 5 days. | Norris. |
| 68. (353) Compere, Inc. and its affiliated subsidiaries, Jockey Underwear, Kenosha, Wis. Men's wearing apparel | For a shipper's Cedartown, Ga. warehouse during the month of August, 1954 shipper had 15% movements to numerous specified points in Texas, Missouri, Oklahoma, Louisiana, Arkansas, Mississippi, and Kansas. | Roman originates the traffic and interlines at Atlanta, Ga. or Memphis, Tenn. with T.I.M.E., Campbell, Brunwell, Tennessee, Groves, Red Ball, East Texas, Overnite Transportation, and Dixie. Rail and TOFC also used. | Ships at Atlanta and Memphis gateways; desires third-morning delivery at Dallas for interchange to Los Angeles, Calif. Shipper desires second-day service to Louisiana, Arkansas, and Mississippi, and 4-day service to the Carolinas. Transit time study indicates service to Atlanta takes 1 day but total transit time to points in Texas takes as much as 12 days, with an average time to Texas points of 5 to 7 days. | Roman and Johnson. Although shipper wants to substitute proposed joint-service for existing joint-service, it is believed that shipper will be able to reach more points because of the proposed gateways. |





Summary of evidence of supporting shippers—Continued

GEORGIA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 69. (350) Boyle, Midway, Rhodes-Haid Products, Division American Home Products Corp., Chamblee, Ga. (Atlanta, Ga.) Aero Wax, Brillo, aero shave, black flag, Pure Brite, oven cleaner, Diaper Pure, window spray, spray starch, Sanitized, Wizard, and Woolite. | From Atlanta about 1 million pounds a month moves to the area served by Red Ball T.L.e. that portion of Louisiana east of Shreveport, La., all of Mississippi, and all of Arkansas located east of Hot Springs, Ark.). The shipments vary from a minimum to T... | Johnson is used to Louisiana points; Dixie to Mississippi points; East Texas to Arkansas; Hyder to some Arkansas and Louisiana points; and occasionally Overton, Roseman, G.F.A., Georgia Highway, Baggett, [illegible] are used. | Transit time is important because shipper allows a two percent discount within 10 days. Consistency of service important because consignees usually maintain limited inventories. | Red Ball. Shipper has used Red Ball from its Dallas facility and has received good service. |
| 70. (350) [illegible] Ga. [illegible] | See shipper under Colorado heading. | | | |
| 71. (351) American Chemical Co., Wayne, N.J. Thermoplastic resins, paint pigments, household products, toilet preparations, and drugs and medicines | From shipper's distribution center at Atlanta, Ga., to points in Mississippi and Louisiana. Monthly shipments of approximately 195,000 pounds to Louisiana, and about 130,500 pounds to Mississippi. | Dixie Highway, Johnson, Hyder, Baggett, East Texas, G.F.A., G.M.E., Gardner, Norton. | Prefers direct-line service. | Red Ball. |
| 72. (352) American Associated Companies, Inc., Atlanta, Ga. Textile products | From its Atlanta and Hampton, Ga. plants to points in Texas. In September 1954 shipper moved 98,000 pounds to points in Texas from Atlanta and Hampton. Shipper maintains an inventory at warehouses in Dallas and Houston, Tex., and ships to Jackson and Greenville, Miss., El Dorado and Texarkana, Ark., Shreveport, La., and other points. About 30,000 pounds a month are shipped to these points. Between May 1954 and May 1955 shipper had about 300 shipments from North Carolina to Dallas; about 150 shipments from South Carolina; about 700 from Georgia, not including Atlanta from which it had about 550 shipments, 10 from Virginia; about 60 from Alabama; 6 from Tennessee, and 3 from New York. | Perkins is used from Hampton to Atlanta. Gardner, Roadway, Transcon, and East Texas are used to Texas. East Texas is used to Greenville and Arkansas points. Cole and Hyder are used to Jackson. Hyder is also used to Shreveport. | Shipper desires single-line service. It complains about the ... transit time and pickup service at Atlanta and Hampton. | Restricted. |
| 73. (354) Atlanta, Ga. | See shipper under Texas heading. | | | |
| 74. (355) Atlanta, Ga. | | | | |
| 75. (356) D. H. Day Industries, Inc. Dan Tex., G.T. Cotton piece goods | From Lavonia, Tex., to its facilities at Griffin, Ga., and points in North Carolina and South Carolina, which merges shipments to points in Texas. Monthly shipments of approximately 200,000 pounds. | Rail. | Needs faster service. | Fixed & Stanley, Roseman, and Johnson. |
| 76. (357) Richmond Screw Anchor Co., Inc., Atlanta, Ga. Bronz and allen | From Atlanta, Ga., to Houston, Dallas, and Fort Worth, Tex., and Monroe, La. Monthly shipments of about 2,500 pounds. | Gardner, Norton-Wilson, East Texas. | Dissatisfied with existing service. | System. Shipper pointed out one dollar in service by East Texas, and stated that that was the reason it discontinued its use. |

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Summary of evidence of supporting shippers—Continued

MC-[illegible]—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 97. (579) Pen-german Manufacturing Co., Atlanta, Ga. Lighting fixtures. | From Atlanta, Ga., to Baton Rouge, and Shreveport, La. Approximately 700 pounds seven to Baton Rouge about twice a week, and other amount to Shreveport once a week. | Ryder, Daggett, Jack Cole, Johnson. | Joint-line service inadequate. Wants faster transit service. | Denton. |
| 98. (580) Stevens, Atlanta, Ga. Electric motors and components (1970 | From Atlanta, Ga., to Shreveport and Baton Rouge, La. Approximately 50,000 pounds moves during summer months. | Johnson and Dale | Prefers single-line service. | Denton. |
| 99. (611) Hilton Folio Company, Orlando, Fla. Wood and other furniture | From Atlanta, Ga., to Baton Rouge, Shreveport, and Monroe, La., and Dallas, Tex. Three shipments weekly ranging between 180 and 200 pounds. | East Texas, Jack Cole | Prefers single-line service. | Denton. |
| 100 (621) American Chemical Co., Orlando, Ga. Cosmetics supplies from spring | From Atlanta, Ga., to Houston and Dallas, Tex. Truckload shipments weighing about 40,000 pounds move every 5 to 8 weeks. | Gateway, Alabama-Georgia Express. | Prefers single-line service, and coastal-moving service. | Denton. |
| 101. (638) Texas Mills, Inc., Rome, Ga. Carpets | From Rome, Ga., to points in Texas. Approximately 2 million pounds moved during 6 month period in 1966. | Daggett, Georgia Highway, R.C.A., Rockway. | Joint-line service inadequate. Wants third-day service. | Daggett. |
| 102. (671) The Sherman Peanut Co., Columbus Ga. Peanuts, candies and baking goods | From Columbus, Ga., to Houston, Fort Worth, Dallas, and Beaumont, Tex. Monthly shipments of 24,263 pounds, 45 pounds, 12,000 pounds, and 1,000 pounds to the respective points. | Jack Cole, Dixie, Herrin, Red Ball, and Ryder. | Needs faster service; problems with delays; and inconsistent service. | Daggett. |
| 103. (675) Lummus Cotton Gin, Co. Columbus, Ga. Cotton and textile machinery and related parts. | From Columbus, Ga., to Dallas, Tex. About 30,170 pounds moved during a 6-month period in 1966. | Daggett, East Texas, Jack Cole, Herrin, Rockway. | Desires single-line service. Needs faster service. | Daggett. |
| 104. (697) Atlanta, Ga. | See shipper under Tex. heading. | | | |
| 105. (700) Atlanta, Ga. | See shipper under Tenn. heading. | | | |
| 106. (705) Baker Laboratories Inc., Gillsburgville, Ga. Insecticide concentrates | From Gillsburgville to Little Rock, Ark., Kansas City, Mo., and Dallas and Houston, Tex. Forty 1000 drums shipped in connection to the above points in shipments weighing from 1 to 42,000 pounds. It made 20 shipments to Little Rock in 1966, 10 to Kansas City, 02 to Dallas, and 27 to Houston. | Vreland, CMW, Green, Gardner, Overnight, Gateway, Transcon., T.I.M.E., ANT, CNFS, ABX, TW, CFS, TNAL, ANF, T & P, Herrin, Ryder, Rockway, and Eastex. | Too much damage with present service. Wants faster service. Damages transit time 4 days, including weekends. Allows 1 week lead time to Little Rock. Wants 2-day service to Little Rock. Almost about 10 days lead time to Kansas City, and Dallas and wants 2- or 3-day service. Some products require refrigeration. | Damage. Of 39 interstate-bound shipments 13 were damaged or short. Of 16 to Kansas City, 10 were damaged or short. Of 66 to Dallas 39 were short or damaged. Of 27 to Houston 17 were damaged or short. |
| 107. (800) North Rock-hurdled Manufacturing Company, Augusta, Ga. Tents' headquarters | From Augusta, to points in Arkansas, Mississippi, Louisiana, Texas, and Missouri. During a 3 month period shipper had 39 shipments to points in the Lone Region. Average weight was 100 pounds (CWT). Shipper states that this represents about 25 percent of the shipments during this period. | Dawson, Brown, Dallas and Rockway. | Wants faster service on a [illegible] cent competition. | [illegible] never used the services of Johnson. Shipper has services of many carriers and it provides to consider of late or delayed shipments. |
| 108. (802) Southern Brass and Fitting Sales Corporation, Atlanta, Ga. Plumbers supplies. | From suppliers in Houston, Beaumont, Dayton, and Dallas, Tex.; Baton Rouge, La.; Pine Bluff and West Memphis Ark., and Jacksonville, Miss., from 10/1/66 to 1/31/67 shipper had 67 shipments to above points. Average weight was about 100 pounds. | Brown, Dawson, Rockway, P.D. Hill, Dallas, Johnson, Ryder. | Wants faster single-line service to eliminate incoming problems. Wants 2-day service to Texas, Arkansas, and Kansas City, and 3-day service to points in Louisiana and Mississippi. | Denton, Johnson. Watson-Wilson gives good service to Kansas City. Several carriers can terminate at Atlanta. |
| 109. (803) Atlanta, College Park, and Fulton, Co. | See shipper under Alabama heading. | | | |
| 110. (808) Singleton-Bachelder Company, Inc., New York, N.Y. Cleaning compounds. | From shipper's in Georgia, Ga. Building to points in Mississippi and Louisiana, 60/40 daily about 10,000-20,000 pounds a year from new plant expected to open in 1968. | None | None overnight service. | Denton. Rockway can serve two or three points in single-line service. Georgia Highway can also serve several points. Several other carriers can perform single-line service and they have been contacted by owner plans to set out complaints. |





Summary of evidence of supporting shippers—Continued

MC-[illegible]—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 111. (801) Dyan Products Company, Inc., Augusta, Ga. Laboratory tools and tape. | From Augusta to points in Louisiana, Mississippi, Missouri, Arkansas, and Texas. During a 3 and one half month period shipper had almost 100 shipments to points in the involved territory. All shipments are LTL weighing about 200 pounds. See shipper under Maryland heading. | Denton, Johnson, Rockway, Watson, Nicholson, Herrin, and Red Ball. | Wants faster service. Allows a 10 to 1 save lead time to Texas, Louisiana, and Mississippi. Wants overnight service to Mississippi and Louisiana and 2-day service to Texas. | Denton and Johnson. There are several interline connections that shipper has not tried. Shipper has to specific complaints to specific points other than poor transit time by Rockway |
| 112. (620) Atlanta, Ga. | | | | |
| 113. (620) The Arrow Company, Troy, N. Y. Clothing | From shipper's Atlanta, Ga. facility to points in Mississippi, Arkansas, Louisiana, and Texas from Lake Village, Ark., to Atlanta, Ga. (receives 600 pounds a week—this is about ten shipments). Shipper moved from Atlanta during May 1966, 2,031 shipments by motor carrier. Average shipment weighs 200 pounds. | Red Ball, Ryder, Rockway, CTNF, Cole, RCA, and U.F.S. | Wants faster service. Dissatisfied with existing joint-line service. | Red Ball. Shipper has no specific complaints. Shipper has overloads to 10 single-line service to many points involved herein. |
| 114. (624) Clanton Bakery Inc., Clanton, Ga. Fruitcakes | From Clayton, Ga., to Laura, and Jackson, Miss., Kansas City, Mo., and points in Louisiana, Texas, and Oklahoma. From 10/10-66 to 11/30/66 (heavy season) 40 shipments to the involved territory weights ranged from minimum to 75 (40,000 pounds). Average 2,000 pounds. | Georgia Highway, Akers, Dunnico, Transcon, T.I.M.E., Shaver, Atlas, Tamiami, Strickland, Ryder, Gardner, Watson. | Wants single-line service. Too many problems with joint-line service. Slow delivery. | Denton. No specific proof of delayed deliveries or poor service. Shipper does not always observe the carrier. |
| 115. (629) Russell Stover Candies, Inc., Atlanta, Ga. Sponge, Cane, Candies. | From Kansas City and Luring, Texas, to Birmingham, Ala. and Atlanta, Ga. At least one LTL shipment moves each week. During the period of a year 2 million pounds have moved from Luring to shipper's distribution warehouse at Atlanta. This is both TL and LTL traffic. The LTL shipments are between 500 and 4,000 pounds. Annually, 40,000 pounds moves from Luring to Birmingham. | Campbell, Watson-Wilson and private carriers | Shipper must either use private carriage to move its traffic from Luring (located 30 miles from Kansas City), or use a local carrier. It wants consolidated delivery from Luring to Atlanta, and from its shipping station in Kansas City to Atlanta. Jones holds authority to serve Luring, and if the application is granted it would be able to serve Atlanta in single-line service. Kansas would be used from Kansas City. | Denton and Jones. Shipper requires a protective service when the temperature is above 80 degrees Fahrenheit. Watson-Wilson's services are dependable on good and bad. Shipper has not always been able to secure equipment from this carrier. Campbell has been used mostly on LTL movements. |
| 116. (632) Deere Dresser. | See shipper under Texas heading. | | | |
| 117. (690) Topeka Motor Freight, Topeka, Kans. General commodities. | From Kansas City, Kans., to Atlanta, Ga. and Birmingham, Ala. Five shipments weighing about 3,000 pounds a day. | T.I.M.E., Gardner, Transcon, Watson-Wilson, Campbell. | Needs faster service. Wants 2-day service. | Jones. |
| 118. (700) Garlock Packing Co., Kansas City, Kans. Vessels. | From Kansas City to Atlanta, Ga. and Birmingham, Ala. Monthly shipments to Atlanta ranging between 30,000 pounds and 40,000 pounds. TL and LTL shipments. | Dilyn, Refrigerated, Birmingham, Jones, Dawson. | Difficulty in obtaining refrigerated equipment. | Jones, Red Ball. Shipper states that it has had no real problems with the joint-line service of Jones and Dawson. Refrigerated problems equipped with heat units are required. Jones. Specific values not given. |
| 119. (702) Atlanta, Ga. | | | | |
| 120. (702) Oldcourt Cold Storage & Ice Corp., Kansas City, Kans. Prepared frozen foods. | From Kansas City to Atlanta, Ga., and Birmingham, Ala., and return. About 600,000 pounds moves annually. | Campbell. | Only LTL service available. Sometimes merchandise to be packed in dry ice which is inconvenient to shipper. Needs a scheduled service. | Jones. Perishable have our views that they are here cred in the tonnage. |

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*Summary of evidence of supporting shippers—Continued*

GUSAC—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 9. (705) C.F. Seeger Co., Kansas City, Kans. Cartridges. | From Kansas City to Atlanta, Ga. Monthly shipments weigh about 3,000 pounds. | Jones, Kansas, Watson-Wilson, T.I.M.E., Transcon, Gardner. | Joint-line service inadequate. Wants 2-day single-line service. | Transcon, Jones. |
| 8. (712) Sunflower Feeding Company, Wichita, Kans. Beef and beef byproducts. | Wichita to Atlanta, Ga. Two to three TL shipments a week. Each TL weighs about 30,000 pounds. | Bilyeu. From Wichita interchanging with other carriers to Atlanta, Ga. | Wants direct single-line service to Atlanta. | Jones. Never tried service of Frozen Food Express which can serve Atlanta through Imperia, Kans. Carries refrigerated equipment is required. |
| 9. (716) Goodyear Tire & Rubber Company, Inc., Topeka, Kans. Grinding wheels. | From Topeka to Tennessee (25 shipments a month), Birmingham, Ala. (10 shipments a month), Georgia (15 shipments a month), and Florida (8 shipments a month). Shipper also anticipates irregular shipments to North and South Carolina. A shipment can weigh up to 4,500 pounds. | Yellow Transit, Watson-Wilson. Interlining with other unnamed carriers. | Joint-line service too slow. Damage to machines more likely in joint-line service. Wants 3-day service to Northern Florida. | Brennan. Yellow Transit offers single-line service to Atlanta, Ga. Ships about eight shipments a month same to Atlanta. |
| 10. (717) Kenny Manufacturing Company, Inc., Topeka, Kans. Excavating and earth moving machinery and parts thereof. | From Topeka to points in the Southeast. Shipments move from Topeka to North Carolina, South Carolina, Wrought, Richmond, Va., Mobile, Ala., and Tennessee. Shipper transports 150,000 to 200,000 pounds a year to the Southeast. Most shipments are LTL and weigh between 200 and 1,000 pounds. | Capitol, Yellow Transit, Gardner, Campbell. | Single-line service would cause less damage to machines. Present service too slow. | Brennan. |
| 11. (704) Rental-Pak, Inc., Wichita, Kans. Pipe and ducts. | From Wichita to Atlanta, Ga., and through Atlanta to points in Florida. During 1964, 130,000 pounds moved to Atlanta and 40,000 pounds moved to Florida. Truckload quantities weigh 12,000 pounds. Shipper anticipates that it will have two TL truckloads a month to Atlanta. | Transcon, Yellow Transit, and Watson-Wilson. | Desires faster service to Atlanta. Transcon's equipment arrives at Wichita between 7:30 and 8:00 p.m. and shipper's employees must be paid overtime to load the trailer. Shipper needs evening pick ups. Wants 2-day service to Atlanta. | Jones. Transcon can perform single-line service to Atlanta. |
| 13. (706) Russell Stover Candies, Inc., Stover Springs, Kans. Chocolate candies | From Kansas City and Leeton, Kans. to Atlanta, Ga., Greenville, Miss., and from shipper's Atlanta warehouse to Birmingham, Ala. In 1964, 2,000,000 pounds were shipped to Atlanta, more than one-half was transported by private carriage. From Kansas to Greenville it transports 100 pounds a week, and from Atlanta to Birmingham it ships at least 1,000 pounds a week. | From Kansas City it uses Campbell, Jones and Watson-Wilson. From Atlanta it uses Johnson, United, Daggett, Mebo, Keeton and C.F.A. | Wants refrigerated equipment to single-line service so as to avoid possible damage to its commodities when transferred to joint-line carriers. | Red Ball. Passes shipments in customs with dry ice. Requires temperature controlled vehicles. This shipper also supports Keeton and Jones. See 1. (29) under Kansas heading. |
| 15. (708) Lock Indemnification Inc., Kansas City, Kans. Refrigerators, freezers and heat load sensors | Kansas City to points in Florida. Shipper moves about 100,000 pounds a year. | Shadowbrook and Southway interlining with Spohn and Central. Also uses the Freight Forwarders, Wis., Ann Rose Freight and Universal Carloading. | Present service too slow. Single-line service would permit less handling of the commodities. | Keeton. Only made six deliveries to Florida in the last 6 months. |
| 14. (709) Phillips Petroleum Company, Bartlesville, Okla. Lubricating oils and greases. | From shipper's plant at Kansas City, Kans. to points in Florida, Georgia, North Carolina and South Carolina. Shipper moved almost 13.5 million pounds during 1965 to the above points. | Watson-Wilson, Southway, T.I.M.E. and Transcon (direct to Atlanta), Georgia Highway and Central. | Wants single-line services to those points which are now served by joint-line operations. Single-line service would avoid causing problems. | Keeton. Shipper has no specific complaints with existing service. It prefers single-line service. |
| 15. (707) Wilson & Co., Inc., Kansas City, Kans. Frozen meats, lunching meats, and meat products. | From Kansas City, Kans. to the gateway of Atlanta, Ga. From 8/15/65 to 12/31/65, shipper moved 40 TL by motor carrier to Atlanta. Average weight was 32,000 to 35,000 pounds. | Refrigerated Transport and Bloomfield, Jones. | Wants fast direct-line service because its products are perishable. Want regular-route carriers do not have appropriate equipment. Wants proposed second-morning regular service to Atlanta. | Jones. Gardner has very little refrigerated equipment available. Wilsons may not be responsible for all spoilage. Requires refrigerated equipment. |
| 1. (000) | One shipper under North Carolina heading. | | | |





*Summary of evidence of supporting shippers—Continued*

CAUTIONS

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
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| 1. (29) Eaton Rouge, La. 2. (30) L. B. Price Merchantile Co. Shreveport, La. Dry goods | See shipper under Missis ippi loading | | | |
| | Inbound to Shreveport from Abbeville, Thomaston, and Columbus, Ga., Nashville, Tenn. and Troy, N.C. The average weight of the shipments is between 20C and 2,10C pounds | From Thomaston shipper has used Georgia Highway interlining with Herrin, Red Ball or Herrin, and Herrin interlining with Dixie and Red Ball. From Nashville it uses a three-line service with Duncan interlining with TVANC, Red Ball, and ETC. From Abbeville shipper uses Georgia Highway interlining with Red Ball or West and Herrin. | Shipper wants a better, faster, and more consistent service that it has so that it would be better able to serve its customers. Shipments would be originated by connecting carriers and interlined with Strickland at Atlanta. Shipper expects 3-day service from the origin points to Shreveport, except on shipments from Troy which it feels should take 4 days. | Strickland |
| 3. (29) Ethyl Corporation Baton Rouge, La. Chemicals inbound Plastic resins and chemicals outbound | Shipper received at its Baton Rouge plant during the first 6 months of 1965 725,300 pounds chemicals from its facility at Orangeburg, S.C. Its facilities at Houston, Tex. received approximately 161,000 pounds of chemicals from its Orangeburg facility during this same period. Outbound from Baton Rouge shipper has movements to Birmingham, Ala., Fort Pierce, Fla. and Stone Mountain, Ga. | Shipments inbound to Baton Rouge from Orange are handled in a three-line haul involving Southern, Eastern and Fayetteville, with interchanges at Atlanta, Ga. and Fayetteville, Miss. Inbound traffic to Houston has been handled in a three-line haul involving Southern, Eastern, and Herrin with interchanges occurring at Atlanta and New Orleans, La. Outbound to Birmingham from Baton Rough Fayetteville interlining with Eastern are used in TL shipments and Eaton is used on LTL shipments. Spohn was used to Fort Pierce but shipper was pleased to commence utilizing the two-line service of Herrin and Central to this point. Also, Eaton is used from Baton Rouge to Stone Mountain. | Time in transit is important on inbound shipments because often the continuation of its manufacturing process depends on the timely receipt of the commodities. On LTL traffic from Baton Rouge to Birmingham shipper allows 3 or 4 days. It indicates that it is not receiving consistent service on this traffic. From Baton Rouge to Stone Mountain shipper allows 4 days. Shipper wishes to substitute a two-line haul for the existing three-line haul to inbound Baton Rouge. | Herrin and Keeton. Shipper is satisfied with the existing service from Baton Rouge to Fort Pierce. It is aware that although it uses a three-line service from Orangeburg to Baton Rouge it has available the services of a number of carriers which can render two-line service. Shipper also supports Keeton and Jones. See #3 (29) under Louisiana heading. |
| 4. (30) American Metal, Inc. New Orleans, La. Steel drums and frames | From New Orleans to points in Georgia east on Atlanta and to points in Alabama south on Birmingham, Mobile, and Montgomery. Shipper has between 12 and 15 movements daily with an average weight of between 35,000 and 0,000 pounds. Shipments to Georgia amount to approximately 12 percent of the total traffic and to Alabama about 15 percent. Shipper expected to increase its output by 15 percent in the year following the filing of its statement. | Dixie will not handle shipments because of damage claims. It continues to handle other of shipper's traffic. Shipper prefers single-line service because it lessens the risk of damage. Time in transit is important because deliveries are often scheduled when a job site is involved. | Herrin. Shipper has satisfactorily used Herrin's service. It indicated that except for a few instances it had no criticism of the existing carriers. |
| 5. (30) Frigidaire Sales Corporation New Orleans, La. Frigidaire appliances | From New Orleans to points in Florida shipper has 15 shipments a day, with an average weight of 900 pounds. Shipper has dealers at Pensacola, De Funiak, Fort Walton, Crestview, and Panama City, Fla. It has about 100 shipments a month from New Orleans to Pensacola. About 65 percent of shipper's Florida traffic moves to Pensacola and the remainder moves to outlying areas. | Hunt and Johnson, to Chipley, Fort Walton, and Panama City shipper uses the three-line service of Hunt, Cooper, and Mebo. | Time in transit is important because of the competitive nature of shipper's business. Shipper expresses a need for the proposed overnight service from New Orleans to Pensacola. Johnson reportedly requested shipper to tender its Pensacola traffic to another carrier because Johnson had more freight than it could handle and the traffic was not profitable although it permitted. Shipper is using Thomas on this traffic but the pickup service is slow. A dealer of shipper's has indicated that it will sell another line of appliances if transit time to Pensacola is not improved. Shipper indicates that Central will [illegible] pickups. | Herrin. Herrin does not propose to serve Chipley, Fort Walton and Panama City. Shipper stated that following a meeting between representatives of Johnson and shipper in April 1965 the former commenced rendering daily pickup service to shipper's plant. It did indicate that in the 60 days preceding the hearing it was possible that Johnson handled a total of 50,000 pounds from shipper's plant to Pensacola. |

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Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 6. (301) Eastern Gas Springhill, La. | See shipper under South Carolina heading. | | | |
| 7. (302) 23 stores including those located at Shreveport and Bossier City, La. | See shipper under Texas heading. | | | |
| 8. (356) Morgan L. Lindsay Co., Inc., Monroe, La. Warehouse operation from Chain Store, general merchandise | Shipments from Monroe to stores located in Alabama, Arkansas, Louisiana, Mississippi, and Texas. Shipper received 10,000,000 pounds at Monroe during 1955—much from southeast. | Ryder direct from some points in Carolinas. Summer joint-line service with interchange at Memphis, Tenn. Akers, Strickland, Woodway, Thornton, Hart, Lee Way, Chicago, T.I.M.E. and Colo. | Dissatisfied with Ryder service because of delays and difficulties in collecting claims. Shipper introduced a transit time study which shows that on inbound traffic to Monroe, excluding weekends, it is receiving between 4 and 5-day service from North and South Carolina; between 4- and 5-day service from the Middle Atlantic States; 4-day service from Georgia; and over 7-day service on one-half of the listed traffic from New England. | Johnson and Keeso support as for inbound shipments. |
| 9. (716) Gulfway Steelware Shreveport, La. Cleaning | Inbound at Shreveport shipper receives 50 shipments a month with an average weight of 100 pounds. Outbound shipment from points in North and South Carolina, Mississippi, Alabama, Florida, and from Atlanta, Ga. | Ryder is used on "1 percent of the inbound traffic with the remainder being handled by Morris and East Texas. | Wants second-morning delivery from all points. Wants second-morning delivery on boundaries. | Strickland. |
| 10. (332) Cameron Corporation Chicago, Ill. Welding machines. | Inbound at its Baton Rouge, La. Houston and Dallas, Tex. plants shipper receives movements from shippers, N.J. Shipments also move from South Kearney and Dover, N.J. to Dallas. Weekly LTL. | To Baton Rouge shipper uses Super Service, Johnson, Strickland, T.I.M.E., and Brooks, to Dallas Kenney interlining with Transcon, Yellow Forwarding, T.I.M.E., Universal Cartaway, and Strickland, are used, and to Houston Kenney interlining with Transcon, Yellow, Consolidated and Roadway are used. | Dissatisfied with having to leave a 10-day load time for shipments from Shipperry, N.J. to Dallas. Transit study on shipments to Dallas indicates 8 to 13-day service from Shipperry except for Yellow Forwarding Co., service then ranges from 7 to 13 days. | Keeso and Johnson. |
| 11. (337) Peterson Products Austin, La. Corrugated plastic pugs, ice chests, channel stems, fishing duster, and fixtures from thermoplastic. Inbound: plastic sap and caps, plastic spigots, and corrugated shipping and retail sale envelopes | Inbound shipper receives at Baton Rouge two shipments a month from Opelika, Ala. during its busy season. The shipments weigh an average of about 1,000 pounds. Outbound from Baton Rouge has about 200 movements a month, with each shipment weighing approximately 400 pounds, to Columbus, Savannah, Atlanta, Mount Vernon, and Evansville, Ind. and Birmingham, Ala. Inbound shipments also move from Opelika, Ala., and Haines, Ga. | Outbound Ryder, East Texas, Brownell, and Bell. Inbound East Texas or Bell interlining with motor carriers to provide service from Opelika to Baton. Interchange at Birmingham Ryder and East Texas from Birmingham to Baton. Ryder, Johnson, Blake, and East Texas from Atlanta to Baton. | Time in transit important on inbound shipments in order to maintain production schedules and on outbound shipments to meet customer demands, especially during peak summer season. Shipper desires third-morning delivery to Birmingham and Atlanta, and fourth-morning delivery to smaller points around Birmingham and Atlanta. | Morris and Strickland will use applicants to Shreveport, La. and a local service (through Rotary Freight) between Shreveport and Baton. |
| 12. (338) Old Continental Diesel Casting Corp. Shreveport, La. Steel castings | From Shreveport to Columbus, Savannah, and Cordele, Ga.; Montgomery, Ala.; and Tuscaloosa and Gainesville, N.C. Shipper has between 10 and 15 movements a month weighing between 2,000 and 3,000 pounds each. | Ryder. | Desires second-morning service to Atlanta. Currently shipper operates on a load time of up to 10 days for shipments to Atlanta and Birmingham and up to 3 weeks for shipments to the Carolinas. | Strickland. |





Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 13. (352) Dye-Dandy, Inc. Bossier City, La. Playground equipment, children's vehicles, and gasite posts. | From Bossier City-Shreveport commercial zone; shipper has daily movements to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Tennessee and the entire eastern seaboard. The shipments weigh from a minimum to 7½. Peak season from January to June or July (8-10 loads a day during peak season) 5 million to 7 million pounds a year. | East Texas, Ryder, and Red Ball, with garnishee at Memphis, Tenn., Baltimore, Md. and Atlanta, Ga. | Equipment shortages during peak season. Wants second-morning delivery from Shreveport to Atlanta. | Support. Strickland, and Red Ball. |
| 14. (353) The Brewster Company Shreveport, La. Outboard-motor mfg. equipment, stamped parts and equipment and metal castings. Outbound-mixed kinds, from [illegible] to carriages, tools, cast steel, pipe, oyster tongs, peaghorn parts to Castings, etc. | Inbound to Shreveport 400+ 25 shipments a month weighing an average of 800 pounds are received from the East, East Coast, South, and Southeast. Outbound shipper has about 90 shipments a month, with an average weight of 200 pounds, to points in Mississippi, Alabama, Georgia, Florida, South and North Carolina, Virginia, West Virginia, and Kentucky. | Ryder, Red Ball, East Texas, and Akers | [illegible] overnight service to Atlanta and overnight service from S. Birmingham. Transit time important particularly on outbound shipments of parts since these are used to make replacements. [illegible] Inbound shipments from Chattanooga, Tenn. are in transit 3 to 6 days, from Birmingham [illegible] days, to Atlanta the shipment took 4 days and another 7 days, and a shipment from Louisville by truck 4 days. | Strickland and Red Ball. |
| 15. (354) Cavanaugh Motor Freight Boston, La. Interm. commodities common carrier | Pick up freight destined from and to points in the Southeast through interchange points at Monroe and Shreveport, La. Overnight haulage about 300 shipments a month average weight 500 pounds. | Ryder, ETMF. | It wants a carrier to set rates on paper products in South. | Strickland. Shipper is currently losing 25 LTL loads a month because of lack of interlineing carriers. |
| 16. (355) Dresser, Ind. Alpine City, Texas. | From Alpine City to points on the Gulf and Atlantic Ports. Outbound volume is 100,000 pounds monthly. From middle Atlantic, and the New England States to Alpine City, Receives 800,000 pounds monthly. Other outbound shipments all made to Birmingham, Montgomery, and Mobile, Ala.; Atlanta, Columbus and Rome, Ga., and to Jackson. Miss. About 100,000 pounds moves to these areas each month. | Red Ball, Brownell, Morris | Wants direct single-line service for faster and more reliable deliveries. | Morris. Shipper has never tried several interline combinations. |
| 17. (356) Bayne and Abbeville, La. | See shipper under Texas heading. | | | |
| 18. (357) SDI, Inc. Baton Rouge, La. Building and hardware supplies. | From points in Alabama, Georgia, New York, Ohio, and South Carolina, to Baton Rouge. Monthly shipments range between 100 and 7,000 pounds. | Overdrive, Red Ball, Dan, Dale, Northern, Johnson, NEX, Ryder, Columbus, ATI, Campbell, Brownell, Valley | Wants faster service. First-day service desired from Atlanta, Ga. Average transit time now is 6 days, including weekends. | Morris if [illegible] Transit time down [illegible] all traffic during period. |
| 19. (358) Carpet Sales Co. Baton, Rouge, La. Carpets. | From Carlisle, Pa., and Rome and Dalton, Ga., to Baton Rouge. Monthly shipments range between 100 and 2,000 pounds. | Dale, Ryder, Brownell, Valley, Johnson. | Wants better than 5-day service. Average transit time is [illegible] days from Pennsylvania and 4½ days from Georgia, including weekends. | Morris. Transit time study does not [illegible] all shipments during period covered. |
| 20. (359) Cook Chemical Co. Kansas City, Mo. Insecticide. | From shipper's plant at Baton Rouge, La., to points in Maryland, Pennsylvania, North Carolina, South Carolina, Tennessee, Alabama, and Georgia. About 40 million pounds moves annually. 75 and 17% shipments. | Ryder, red ball, Morris, Gardner, Strickland, Copperstate, Brownell. | Protects mfg. | [illegible] |

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*Summary of evidence of supporting shippers—Continued*

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 21. (No8) Fletcher Equipment Company Baton Rouge, La. Contractors equipment | Inbound to Baton Rouge shipments are received from Atlanta, Ga., Birmingham, Ala. and points in New York, Pennsylvania, New Jersey, and Virginia, among other States. Shipper receives between one and four shipments each day and the shipments each day and the shipments weigh between 100 and 30,000 pounds with the average weight being about 800 pounds. | Red Ball, Ryder, Acme, Gordons, Herrin, Braswell, Dale, Strickland, Roadway, Cole, T.I.M.E., and Johnson originate Atlanta movements, and Campbell and Red Ball deliver them. Ryder renders single line service from Atlanta to Baton Rouge. New Jersey, Pennsylvania, and Virginia shipments are originated by Ryder, Roadway, Strickland, T.I.M.E., Johnson, and Nelson and are delivered by Braswell, Red Ball, ACME, Campbell, Gordons, Herrin, and Dale. | Shipper indicates that it has been forced to maintain a larger inventory than it would like to because of poor transportation service transit time and consistency of transit time are important to shipper. It introduced two transit time studies. The first lists 22 shipments from Atlanta, delivered between April and September 1966 and August 1965. Transit times were not given for two listed shipments. The five shipments had transit times, including in some instances weekends, of 3, 4, 5, 8, and 6 days, respectively. One shipment from Ohio, including two weekends and a holiday had a transit time of 12 days, three shipments from New Jersey had transit times, including weekends in all instances of 10 (include 2 weekends), 8, and 9 days respectively. One shipment from Virginia had a transit time, including two weekends, of 10 days. The second study listed about 45 shipments from points in Ohio, New Jersey, Georgia, New York, Delaware, and Pennsylvania. Shipper was not satisfied with the transit times. | Herrin. Shipper is satisfied with Herrin's service as a delivering carrier. It wants to use applicant from the Memphis line gateway. |
| 22. (No23) Shreveport and others at points in Louisiana. | See shipper under Texas heading. | | | |
| 23. (No6) Olin Mathieson Chemical Corporation Forest Products Division West Monroe, La. Paper products. | From points on the Ouachita eastward to West Monroe. From May to August 1966 shipper received 170 shipments from above points. Total weight was about 380,000 pounds. Four West Monroe to points on the eastern seaboard. From August to September shipper shipped in excess of 90 shipments to above points average weight 2,000 pounds. | Red Ball, Ryder, Braswell, Acme, Strickland, Moore, M & N, Nelson, Roadway | Wants faster service, average transit time is 10 days, including weekends. Wants east-way delivery to Atlanta and 2-day service to Carolinas. | Johnson, Dawson, Red Ball. Shipper uses rail and private carriage to transport most of the involved traffic. |
| 24. (No9) Lake Charles Harbor and Terminal District Harrison Lake Charles, La. | None given. | None given. | The growth and expansion of the Lake Charles harbor and Terminal District, and its consequential need for improved motor carrier service. | Baggett, Gardner Dawson, Floyd & Beasley, Red Ball, Strickland. Lake Charles Harbor and Terminal District is a political subdivision of the State of Louisiana. |
| 25. (No8) Pollards Glass Corp. Kenner, La. Iron castings electrical motors laundry machinery and parts. | From Columbus, and Atlanta, Ga., St. Petersburg, Fla., Detroit, Mich., Warren, R.I., Glastonbury, Conn., and Spartanburg, S.C., to Kenner. From Kenner, La., to Birmingham, Montgomery, and Dothan, Ala., Atlanta, and Columbus, Ga. Inbound shipments range between 40 and 30,000 pounds daily outbound shipments range between 500 and 15,000 pounds. | Cole, Ryder, West Gate. | Wants faster service. Average transit time from Columbus is 4 days, from Atlanta 2.5 days, and from Detroit 5 days, including weekends. | North. Shipper's outbound traffic requires special trailers because of its height. Transit time study includes all traffic for period covered. |





*Summary of evidence of supporting shippers—Continued*

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 26. (No7) Hunt Manufacturing Corp. Lafayette, La. Walk-in refrigerators, materials and supplies necessary to the erection or installation thereof | From Pennsylvania, N.J., Atlanta, Ga., and Birmingham, Ala., to points in Louisiana. Approximately 200 pounds a month | Ryder | Needs faster service | Red Ball. It appears that Ryder in connection with Herrin Express can serve shipper on single line service. |
| 27. (No7) American Metal, Inc. New Orleans, La. Metal doors and door frames | From New Orleans to points in Alabama and Tennessee. Shipments range between 11 and 12 [illegible] | Viking, Ryder, Campbell, Dixie, Overton, Strickland, ABA | Desires faster service and single-line service | Dawson. Shipper could not give the name of the points within the destination states to which it already has single-line service. |
| 28. (No5) Ens. Inc. Baton Rouge, La. Building and hardware supplies | From points in Georgia, New York, Pennsylvania, Florida, Alabama, to Baton Rouge. Shipments range between 30 and 3,700 pounds | Cole, Mason & Dixon, Ryder, McCombs, Strickland, Herrin, Dale, Inc., Braswell | Needs faster service. Average transit time 5 days | Dawson, Johnson, Gardner and Herrin |
| 29. (No6) Baton Rouge, La. | See shippers under North Carolina heading. | | | |
| 30. (No8) Beco, Inc. Hanover, La. Electrical equipment and supplies | From Atlanta, Ga., Trenton, N.J., Philadelphia, Pa., New York, N.Y., and Matthews, N.C., to Hanover. Approximately 350,000 pounds annually. | Ryder, Herrin, Red Ball, Braswell | Needs faster service. Allows 10 days lead time from Trenton and Philadelphia and 10 days lead time from South Carolina and Atlanta. | Dawson, Johnson. |
| 31. (No2) Lafayette Woodwork Lafayette, La. Millwork | From Birmingham, Ala., to Lafayette, La. Shipments range between 40 and 174 pounds. | Ryder, Herrin, Dale, Red Ball, Southern. | Wants second morning service from Birmingham to Lafayette. Currently allowing 4 to 5 days lead time. | Herrin. Testimony indicates that shipper is not in complete control of routing. Specific complaint against Ryder and Dale (claims). |
| 32. (No4) Castillo Wholesale Specialty Company Lafayette, La. Plastic flowers and wreaths | From Montgomery, Ala., and Ridgefield, N.J., to Lafayette. Shipments range between 41 and 871 pounds. | Johnson, Main, Dale, Herrin, Dixie, Cole, Ryder, B'Ham | Needs faster service. Average transit time 7 days including weekends. | Herrin. Transit study does not include all shipments which moved during the study period. |
| 33. (No7) Howard Stark Company, Inc. Thibodaux, La. Candy | From Thibodaux to points in Alabama, Georgia, Florida, and Mississippi. | Herrin, Dale, Ryder, Southern, Red Ball | Wants regular daily pick-up. | Herrin. Traffic is seasonal. |
| 34. (No8) Robinson Bros., Inc. Baton Rouge, La. Auto parts | From Atlanta, Ga., Baton Rouge. Between 1,000 and 1,500 pounds moves monthly. | Ryder, Cole, Red Ball | Joint line service via Atlanta. Allows 5 to 6 days lead time from Atlanta to Baton Rouge wants faster service. | Red Ball. |

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*Summary of evidence of supporting shippers*—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 35. (570) The Prairieville Canning Co. St. Francisville, La. Canned sweet potatoes | From Francisville, La., to Atlanta, Ga. Approximately 1 million pounds annually. | IC, MKT, L & N, Red Ball, Pluto, Gordon, Knox, Pyle, West Texas, Tele. | Joint-line service inadequate. Want one-line service. | Red Ball traffic is handled. |
| 36. (571) Dixie Office Supply Co. Lafayette, La. Office supplies | From Atlanta, Ga., and Birmingham, Ala., to Lafayette. About three shipments a month from Atlanta ranging between 150 and 600 pounds and about ten shipments monthly from Birmingham averaging about 500 pounds | Ryder | Needs more consistent delivery service, and wants faster transit time. Wants that 3-day transit time from Birmingham is good service. | Red Ball. Shipper is using the single-line service of Ryder. |
| 37. (572) Lighting, Inc. New Orleans, La. Electrical supplies | From Atlanta, Ga., to New Orleans. Weekly shipments ranging between 100 and 5,000 pounds. | Johnson, Eggert, Red Ball, Herrin, Ryder. | [illegible] in handling [illegible] weak load time. | Herrin |
| 38. (573) Morgan & Lindsey, Inc. Monroe, La. Clothing | From Atlanta, and Macon, Ga., and Birmingham, Ala., to Monroe. From Monroe to Greenville, Miss. Inbound daily shipments of about 900 pounds, from each point, and outbound shipments about 112,530 pounds for a 10-month period in 1956. | Brownell, Herrin, Missouri Pacific, Ryder, Red Line, Red Ball. | Needs faster service. Average transit time from Atlanta is 4 days. From Birmingham 4 days from Macon 7 days. (All include weekends). Wants 2-day service from Atlanta to Monroe and overnight service from Birmingham to Monroe. (No transit time figures given on outbound shipments). | Red Ball, and Herrin. Traffic is received |
| 39. (574) H.B. Utley Paint Co., Inc. New Orleans, La. Paint | From Chattanooga, Tenn., to New Orleans 17% and truckload shipments of about 5,500 pounds twice a week. | [illegible] | Needs faster service. Wants consistent second morning service. | Eastern. Eggert appears to be able to serve shipper in single-line service. |
| 40. (575) Sun Lighting Fixtures, Inc. Monroe, La. Electrical fixtures and appliances | From points in New York, Pennsylvania, New Jersey, Massachusetts, Georgia, and Virginia, to Monroe. Shipments ranging between 30 and 1,195 pounds. | Red Line, Ryder, Red Ball, Acme Fast Freight, Pontiac, Jack Cole, Pilot, STT, T.I.M.E., Roadway, ATI, Murdock, Ball, Brownell, Herrin, Kavanaugh. | Needs faster service. Average time in transit is 8 days. Including weekends. | Eastern, Johnson. Transit time does not include all shipments which moved during the study period. |
| 41. (576) Stag Shop, Inc. West Monroe, La. Men's clothing | From Miamsburg, O. C., Hickory, Winchester Tenn., Sunbury, Pa., Attleboro, Mass., Hartsville, S.C., Atlanta and Hamilton, Ga., and Birmingham, Ala., to West Monroe. Shipments range between 35 and 7,000 pounds. | T & P P.R., SSPAC Railroad, Herrin, Red Ball, Ryder, Thornton, T.I.M.E., ATI, JML, WTL. | Joint-line service inadequate. Average transit time is 4 days including weekends. | Eastern, Johnson. Transit time does not include all shipments. |
| 42. (577) Tensas Tire Service, Inc., Morgan City, La. Tires and tubes | From Gadsden, Ala., and Akron, Ohio, to Morgan City. Shipments range between 30 and 500 pounds. | Ryder, Red Ball, Herrin, Eastern, Roadway. | Needs faster service. Wants 3 or 4-day service. Average transit time is 7 days, including weekends. | Herrin. Special orders often require expedited service. |
| 43. (578) Vinyl Corporation, Baton Rouge, La. Soy fredigot and chemicals | From Baton Rouge and Orangeburg, S.C., to points in Connecticut, Delaware, Ohio, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Virginia. From points in Massachusetts, New York, Pennsylvania, Virginia, Connecticut, and Delaware, to Baton Rouge. Outbound between 50 and 372,000 pounds moved to destination States for 5-month period 1956. Inbound between 100 & 6,000 pounds moved daily. | Akers, CTSRC, Roadway, Strickland, Ryder, James, Jones, Smith, Eastern, Wilson, W. Stick, Poplerville, Washington, Red Ball, Cole, Gordon, Herrin, Gulf, Ala. | Joint-line service inadequate. Average transit time is 9 days, including weekends, on inbound and outbound shipments. | Eastern, Johnson. Transit time does not include all shipments. It does not appear that Vinyl Corp. controls the routing of inbound shipments. |
| 44. (579) Pelican Office Supply, Inc. Baton Rouge, La. Office equipment | From High Point, N.C., Greenville, S. C., and Birmingham, Ala., to Baton Rouge approximately 350,000 pounds annually. | Ryder, Consolidated, Copperstate, Red Ball, Harris, Gordon, Complex... | Wants Tuesday service. Wants third-day service. | Eastern, Johnson |
| 45. (580) Cooperage Outdoor and Chemical Corp. Baton Rouge, La. Spirantic rubber | From Baton Rouge, and Addis, La., to points in Connecticut, Massachusetts, New Jersey, and Maryland. About 4 million pounds, 105,000 pounds, 250,000 pounds and 35,000 pounds to respective destination States monthly. | Sale, Johnson, Copperstone, Consolidated, Ryder, Kavanaugh, Strickland, Akers. | Needs expedited service | Johnson |





*Summary of evidence of supporting shippers*—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 46. (581) Interstate Electric Co. Shreveport, La. Electrical supplies | From points in Connecticut, New York, North Carolina, Pennsylvania, New Jersey, Georgia, South Carolina, Virginia, and Alabama to Shreveport. Approximately 80,000 pounds annually. | Herrin, Strickland, Ryder, Red Ball, East Texas, Acme. | Wants [illegible] service. Wants one-day service. Average transit time is 4 days, including weekends. | Eastern, Johnson. Shipper indicated that it had single-line service from some points, but did not indicate which points. Transit study includes all shipments during period. |
| 47. (582) Standard Fittings Co. Opelousas, La. Iron and steel fittings. | From Opelousas to points in Georgia, Alabama, Mississippi and Florida. Daily shipments ranging between 300 and 10,000 pounds | Herrin, Ryder, Red Ball. | Wants dependable service. Prefers direct single-line service. | Herrin. The single-line service of Red Ball is available to shipments to Florida points, and single-line service is available to Alabama points. Herrin |
| 48. (583) General Electric Co. New Orleans, La. Electrical appliances | From New Orleans to points in Florida. Daily shipments ranging between 50 and 7,500 pounds. | Eastern, Johnson, Red Ball, Eggert | Needs faster service. Presently allowing 3 days lead time. | Red Ball, and Herrin. Traffic is received |
| 49. (584) Lafayette Drug Company, Inc. Lafayette, La. Drugs | From Atlanta, Ga., and Hartsport, Ala., to Lafayette. Monthly shipments ranging between 150 and 12m pounds. | Herrin, Southern, Red Ball, Ryder, Gulf. | Needs faster service. Wants third-morning service. Average transit time is 8 days from Hartsport, and 11 days from Atlanta. (Weekends included in both.) | Red Ball. Transit study includes all shipments during period. |
| 50. (585) General Office Supply Co., Inc. Lafayette, La. Office equipment | From Atlanta, Ga., and Birmingham, Ala., to Lafayette. Weekly shipments range to [illegible] between 600 and 1,800 pounds. | Ryder | [illegible] service [illegible] transit time [illegible]. Average [illegible] service. Average transit time [illegible] including weekends. [illegible] covered period between 3/8/57 and 5/7/57. | Red Ball. Ryder offers single-line service. Transit study [illegible] to include all shipments during period covered. |
| 51. (586) Precoor Industrial Valve, Alpine City, Ala. Valves | From Alpine City, to Atlanta, Ga., Birmingham, Ala. | Red Ball, Brownell, Herrin. | Needs faster service. | Red Ball |
| 52. (587) AFCO Corp. Alexandria, La. Wallboard metal moulding | From Alexandria to Atlanta, Ga., and Birmingham, Ala. About 10,000 pounds monthly. | Red Ball, Jack Cole, Campbell, Harper Bros. | Needs faster service. Wants 2-day service. | Red Ball. |
| 53. (615) ACME Warehouse, Inc. New Orleans, La. General commodities | From New Orleans to Mobile, Ala., and Pensacola, Fla., and from points in Georgia, to New Orleans. TL and LTL shipments (volume and frequency of traffic not given.) | Herrin, Johnson, Central, Strickland, West, Red Ball, Brown, Dixie. | Difficulty in getting pickups. Presently allowing 4 days lead time. | Herrin |
| 54. (616) J. Aron Co., Inc. New Orleans, La. Sugar and coffee | From New Orleans and Supreme, La., to points in Alabama, Mississippi, and Florida. TL and LTL shipments specific volume and frequency of traffic not given. | West, Johnson, General, Dixie, Gordon, Gulf. | Wants old-fashioned service. | Herrin |
| 55. (617) Cookman, Inc. Baton Rouge, La. Merchandise sold in retail department stores | From Atlanta, Ga., and Birmingham, Ala., to Baton Rouge. Monthly shipments range between 2,000 and 10,000 pounds. | Ryder, Herrin, Red Ball, Dixie, Brownell, Consolidated, Copperstate. | First-line service inadequate. Wants faster service. Average transit time from Atlanta is 6 days including weekends. [illegible] service. | Red Ball. Transit time includes all shipments during period covered. |
| 56. (618) Wright Root Beer Co. Baton Rouge, La. Bottle caps | From Birmingham, Ala., to Baton Rouge, La. About 10,000 pounds monthly. | Campbell, Dixie, Red Ball, Ryder. | Eastern single-line service. Wants overnight service. | Red Ball |
| 57. (619) Thomas Chemicals Drug Co. Monroe, La. Drugs, chemical supplies | From points in New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Pennsylvania, Virginia, Georgia, South Carolina, and Washington, D.C., to Monroe. Monthly shipments range between 50 and 1,000 pounds. | Atlanta, Acme, Brownell, Johnson, Herrin, Akers, Kavanaugh, Emerson, Red Ball, East Texas, Red Line, Strickland, Ryder, Campbell, Eastern, Pendleton, Watson, Dunville, Hines & Dixon, MKT, Pilot, T.I.M.E., SKY. | Joint-line service inadequate. Wants faster service. Average transit time is 6 days, including weekends. | Eastern, Johnson. Transit study includes all shipments, during period. |

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Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing carriers utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 38. (6883) Elmer Candy Corp. Elmer Grimes, La. Candy. | From New Orleans to points in Alabama and Tennessee. Weekly shipments ranging between 75 pounds and 1,261 pounds. | Campbell, Dixie, East Northern. | Needs faster service. | Brennan. |
| 39. (6330) Delta Manufacturing Co., Monroe, La. Upholstery fabric furniture. | From Shreveport to points in Florida, Maryland, Connecticut, New York, Pennsylvania, and North Carolina. About 20,000 pounds monthly. | East Texas, Dixie, CTCMMC, Old Dominion, Ahern, T.I.M.E., Rapid, Strickland, Thurston, Harper, Carolina, Georgia, Ryder, Roadway, Yancey, NC, Standard, Chero-X Dixie, Pilot. | Joint-line service inadequate. Wants faster service. Wants 5- to 6-day service to Northeastern points, and 7-day service to southeastern points. | Brennan, Johnson. |
| 40. (8542) American Insulators, Inc. Ruston Range, La. Insulators, communication and carrying. | From points in Georgia, to Baton Rouge. Weekly shipments ranging between 500 and 1,000 pounds. | Red Ball, Ryder. | Produces single-line service. Wants faster service. Presently allows between 7 and 9 days load time. | Harris. |
| 41. (8-1) Flint Ink Corp. Bon Ombonne, La. Printing inks. | From Bon Brisson, La., to Pensacola, Fla., Mobile, Ala., and Atlanta, Ga., and return. Weekly shipments averaging about 500 pounds. | Central, East Northern, Johnson, Dixie, Dixie. | Needs faster service. Wants second-morning service. Presently allowing between 8 and 9 days load time. | Harris. |
| 42. (902) Blair Flour Covering Co., Lake Charles, La. Flour covering, dyeprint and related supplies. | From points in Georgia and Tennessee to Lake Charles. Weekly shipments range between 500 and 8,000 pounds. | Harris, Ryder, Southern. | Wants faster service. Presently allowing between 10 days and 2 weeks load time. | Harris. |
| 43. (893) Hardware Building Supply, Inc. Bon Ombonne, La. Gas and oxidized supplies and equipment. | From Atlanta, Ga., and Birmingham, Ala., to New Orleans. | Dixie, Red Ball, Johnson, Ryder. | Needs faster service. Wants first-afternoon service from Atlanta, and overnight service from Birmingham. Average transit time is 7 days, including weekends. | Harris. Emergency shipments sometimes required. Transit times given were given when solicited to show poor service. |
| 44. (894) Intercoastal Steelcrafts, Lake Charles, La. Welding machines, cables, electrodes, welding gas and other articles used in welding business. | From Atlanta, Ga., Birmingham and Montgomery, Ala., to Lake Charles. Monthly shipments ranging between 150 and 500 pounds. | Harris, Dixie, Southern, Strickland. | Wants faster service. | Harris. |
| 45. (8863) Baton Rouge Wholesale Hosp Co., Baton Rouge, La. Surgical hose supplies. | From Atlanta, Ga., to Baton Rouge. Monthly shipments ranging between 50 pounds and 10,000 pounds. | GFA, Ryder, Johnson, Dixie, Consolidated, Southern, T.I.M.E., Gordon, Dixie, Red Ball, East Northern. | Joint-line service inadequate. Wants second-day service. Average transit time is 5 days including weekends. | Red Ball. Transit study includes all shipments from Atlanta during period covered. |
| 46. (8863) Malone & Hyde Food Co. Bastrop, La. Automobile parts. | From Atlanta, Ga., to Bastrop. About 1,000 pounds monthly. | Ryder, Dixie, Ahern, Red Ball, Southeast Gen Line. | Produces single-line service. | Red Ball. |
| 47. (887) Superior Roofing Products Co. Baton Rouge, La. Roofing materials and related items. | From Atlanta, Ga., to Baton Rouge. Daily shipments ranging between 50 and 1,000 pounds. | Ryder, T.I.M.E., Red Ball, Dixie. | Joint-line service inadequate. Wants 2-day service. | Red Ball. Emergency shipments sometimes required. |
| 48. (8864) Ed F. Brennan & Sons, Inc. (a) Gibson Wholesale Hardware, Inc. (c) Gulf Gibson Wholesale Hardware (d) H. Gibson Dry Goods, Inc. (e) Gibson Dry Goods, Inc. Shreveport, La. Iron and hardware, wholesale piece goods for clothing stores and dry goods. | From Atlanta, Ga., Dalton, Tex., Memphis, Tenn., Birmingham, Ala., and Greenville, Miss., to Minden, and return. Shipments range between 40 and 1,100 pounds. | Ahern, T.I.M.E., Georgia Highway, Southeast, Southern, Ryder, Red Ball, Greenwood, Yellow, Ryder, Campbell, Texas, F & W, Gordon, Johnson, Dixie, A.C.L., A.C.M.L. | Needs faster service. Average transit time from Atlanta is 5 days and from Birmingham is 4 days. | Red Ball, Johnson. Transit time does not include all shipments during period. |





Summary of evidence of supporting shippers—Continued

LOUISIANA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing carriers utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 69. (6866) Lee Sandy, Inc. Bossier City, La. Lamp parts and [illegible] equipment | From Bossier City, La., to Richmond, Va., Baltimore, Md., Washington, D.C., Wilmington, Del., and points in Pennsylvania. About 90 million pounds moved annually. | Strickland, Red Ball, East Texas, Mervin, A.P.F., Brunswick, Hall, Roadway, T.I.M.E. | Joint-line service inadequate. Wants faster service. | Brennan, Johnson |
| 70. (6867) Hall's Potato Chip Co. Alexandria, La. Corn chips, related items and advertising. | Between Shreveport, La., on the one hand, and, on the other, Alexandria. About 1,500 pounds weekly. | Johnson, A.P.F., Red Ball, Ryder, Central, Dixie, Air Express | Prefers single-line service. Wants between second-morning and third-morning service. | Red Ball |
| 71. (749) Traffic Signals, Inc. Shreveport, La. Traffic signals and controls | From Shreveport to Atlanta, Ga. (as a gateway to Southeastern States) and Birmingham, Ala. Shipper presents no volume figures. Receives occasional shipments from Decatur, Ga. | Red Ball (interline with Dixie and Campbell, Ryder, Central). | [illegible] line service to ease routing problem and obtain faster deliveries. Allows 5 to 6 days load time from Shreveport to Atlanta, 7 days on Florida shipments. | Red Ball. ETHW has direct service from Shreveport to Atlanta. |
| 72. (8868) W.S. Lemmer Company Shreveport, La. Paint [illegible] | From Commerce, Ga. to shipper's [illegible] at Shreveport and Monroe, La. and Houston, Tex. Receives one or two shipments a day at Shreveport, three shipments a week at Houston, and about one shipment a week at Monroe. Each shipment may weigh from 85 to 500 pounds. | Northern to Atlanta T.I.M.E. to Memphis and Red Ball delivering to Shreveport. Northern to Roadway which delivers to Houston Ryder, Johnson | Too much time delay on shipment to Shreveport and Monroe | Red Ball. Service to Houston is satisfactory. Johnson interlining with Red Ball at New Orleans can offer a two-line service |
| 73. (8869) Schaefer Home Manufacturing Corp. Pineville, La. Parts for mobile homes | From Atlanta, Ga. and Birmingham, Ala. to [illegible] Peaches [illegible] a month from Atlanta area. Weight ranges from minimum to 2,000 pounds. Receives weekly shipments from Birmingham averaging 600 pounds. | Ryder, Dixie, Georgia Highway and Most [illegible] linking with Red Ball | Wants faster transit time and a single-line service. Wants third-morning service from Atlanta and Birmingham | Red Ball. The proposed service [illegible] can be single-line. |
| 74. (7865) Regal Plastic Supply Co. Shreveport, La. Plastic sheets, rods, tubing and film | From Centerville, La. to Shreveport. Receives two or three shipments a month totalling 9,000 or 9,500 pounds from Shreveport to points in Arkansas, Mississippi and to Birmingham, Ala. Ships standard cases weighing 240 pounds, some quantities shipped with less weight. | Ryder, Southeastern, AFF, East Texas, Red Ball | Needs a responsive service to meet government contract deadlines | Strickland. If applications were granted Strickland still could not serve Centerville direct. Present service of Red Ball seems to be adequate. Has several carriers presently available with single-line and joint-line service. |
| 75. (887) Pitton Products Co. Monroe, La. Steel doors and frames | From Monroe to Greenville, Miss. (300 to 25,000 pounds two times a month) and Atlanta, Ga. (occasionally 700 pounds) | Red Ball, Red Line, Ryder, Mervin | Shipper has lost sales in Atlanta because of poor service. Believes market can be expanded with good single-line service to Atlanta. Shipper has experienced damage in joint-line service | Red Ball. Only has one customer in Florida |
| 76. (817) Adams Trailers, Inc. Ruston, La. Axles, wheels, tires, bearings, steel, aluminum | From Montgomery, Ala. to Ruston. Receives from Montgomery once a week 1,000-3,000 pounds. | ABA, Ryder Red Ball, East Texas, Dixie | Presently has a three-line service. Wants a two-line service. | Red Ball. Several two-line labels now available over various gateways but no specific complaints. |
| 77. (870) Waller Feed Company Summerville, La. Auto parts | From East Point, Ga. (within the Atlanta Commercial Zone) to Summerville. Receives one shipment a week averaging 500 pounds | Ryder interlining with Red Ball | Wants single-line faster service. Allows load time of 5 or 6 days. | Red Ball. It appears Herrin offers single-line service. Will can also handle the small shipments. Shipper has been using Ryder and UPS for 3+ years and has no specific complaints. |
| 78. (829) Westinghouse Electric Supply Company, Baton Rouge, La. Articles handled by electric supply houses | From Atlanta, Ga., Birmingham, Ala., and Jackson, Miss., to Baton Rouge. From 1/5/64 to 11/2/64 received in excess of 130 shipments from the above points. Average weight about 300 pounds a shipment. | Ryder, Gordon, Dixie, Red Ball, Campbell, Yellow, Mart, ABA, Dixie, Johnson | Present service is two slow. Wants second-morning service from Jackson to Baton Rouge and one-day service from Atlanta and Birmingham to Baton Rouge. Shipper's transit time study shows that it is generally receiving 3.5-day service from Birmingham, between 4 and 5-day service from Atlanta, and 3 day service from Jackson. | Herrin. Ryder now gives 7-day service as shown by the exhibit. In many cases shipper does not select the originating carrier. |

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Summary of evidence of supporting shippers--Continued

LOUISIANA--Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 71. (835) Louisiana Valve and Fitting Company Shreveport, La. Industrial valves and fittings. | From Shreveport to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Ships three times a week to Birmingham averaging 1,000 pounds. Ships once a week to Atlanta averaging 500 pounds. Ships five or six times a year to Greenville. | Ryder, Red Ball, East Texas. | Wants overnight delivery to Birmingham and second-day delivery to Atlanta. | Red Ball. Shipper has single-line service to Atlanta and Birmingham. |
| 80. (835) Beaubel Warehouses of Monroe, Inc West Monroe, La. Nonperish items stored in a warehouse (ice) | From Atlanta and Stone Mountain, Ga. to West Monroe. Receives between 100,000 and 120,000 pounds a month. | Brazwell, Red Ball, Ryder, Dixie, ETMF. | Much of shipper's traffic is of an emergency nature and expedited deliveries are essential. Existing service is too slow. Allowing lead time of 4 to 5 days from Atlanta. Wants proposed second-day service. | Red Ball. |
| 81. (867) Stores and Stored, New York, N.Y. General merchandise. | From Charlotte, N. C. and Atlanta, Ga. to shipper's stores located at Shreveport, La. and San Antonio, Austin, Dallas, Fort Worth, Irving, Garland, and Corpus Christi, Tex. From 7/6/60 to 12/31/64 shipper moved 40 shipments to the involved territory. No weights given. | Bowman, ETMF, Clark, Buckaboo, Gardner, Brazwell, SAT, SFT, Red Arrow, Control, Consolidated Roadway, Overnite, Rex Dixie. | Wants improved transit time. Wants overnight service from Charlotte to Memphis. Average transit time is about 6 days including weekends. Wants consistent 3 or 4-day service. | Strickland. Strickland can now serve many of the involved points by using Memphis gateway but shipper has never used this service. |
| 82. (860) Liddell Company Shreveport, La. General sundry items. | From Atlanta and Augusta, Ga., Chattanooga, Tenn., and Montgomery, and Birmingham, Ala. to Shreveport. Receives about 750,000 pounds a year from the above points. All are LTL shipments. | Bowman, ETMF, Clark, Buckaboo, Gardner, Brazwell, SAT, SFT, Red Arrow, Control, Consolidated Roadway, Overnite, Rex Dixie, T&P, Red Ball, Universal, Herrin, ETMF. | Wants faster service. Allows lead time of 3 to 4 days but requires 2 or 2-day service. | Bowman, Johnson. Shipper supplier's generally choose the carrier. |
| 83. (817) Five stores | See shipper under Pennsylvania heading. | | | |
| 84. (837) P. Lorillard Co., Inc. (Kent Products Co.) New York, N.Y. Animal food | From shipper's facilities located at Golden Meadow and Lockport, La., to points in Alabama, Georgia, North Carolina, and South Carolina. Annual protected tonnage to points in the above States is about 11 million pounds. | Plant not yet in production. Only interstate carrier with authority to serve Golden Meadow is Herrin. | Wants motor carrier service at its new plant. Wants 2 or 3-day service to Alabama, Georgia, and Carolinas with straight route. | Bowman. |

MARYLAND

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| 1. (838) Proctor Silex, Inc. Baltimore, Md. Electric appliances. | From Baltimore to Little Rock and Pine Bluff, Ark., and to points in Mississippi, Louisiana, and Texas. During January 1957 shipper moved 348,700 pounds to the above points. | Freight Forwarders, Roadway, Johnson. | Wants faster transit time because shipper's distributors do not maintain inventories. Roadway refused to pick up a shipment because it did not have any power units available. | Shipper has single-line service of Roadway to many points in Texas. T.I.M.E. offers single-line service to Little Rock. Shipper has not tried joint-line service of Bowman over Memphis, Tenn., Gateway. Johnson also can serve many points directly. |
| 2. (861) Standard Cap & Seal Corporation, Division of Poly Seal Corporation, Baltimore, Md. Plastic bottles and tops. | From Baltimore to Dallas and Houston, Tex. and Little Rock, Ark. Ships 100,000 pounds a year to above destinations. Average shipment weighs 500 pounds. | Associated Texas Freight, Roadway, Trans-American, Bowman. | Wants faster, more dependable single-line service. Shipper has experienced delays, difficulties in tracing and in obtaining pick ups. Shipper was informed that Mercury refused to accept one of its shipments at Birmingham. | Bowman, Johnson. There are four carriers which have single-line service to the destination points. Shipper conceded that only at times is service poor. |
| 3. (866) (a) Baltimore Paint & Chemical Corporation, Baltimore, Md. (b) Richmond Co. of Florida, Atlanta, Ga. Paints. | From Baltimore and Atlanta to points in Arkansas, Louisiana, Mississippi, and Texas. Ships about 500,000 pounds a month to the above destinations. | Bowman, Gordons, Tropicana, ETMF, Ryder, West, Campbell, Roadway. | Present transit time is too slow. Shipper has encountered tracing problems. Wants 2-day service on TL and 3-day service on LTL from Baltimore to Arkansas, Louisiana and Mississippi, and from Atlanta it wants overnight service on TL and second-day service on LTL. From Baltimore to Texas it wants third morning on TL and fourth morning on LTL. | Bowman, Johnson. Shipper has several carriers available to it. Did not submit any evidence of long transit time. Consolidated has authority to serve points in Texas. |





Summary of evidence of supporting shippers—Continued

MASSACHUSETTS

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 1. (781) Allied Paper Inc. and Kalamazoo Paper Co., Kalamazoo, Mich. Toilet tissue, paper goods and related and unfinished or material, and goods and [illegible] | [illegible] points in the Southwest. Shipper has shipments from its plants and warehouses [illegible] Texas, [illegible] City, [illegible], N.Y., Old Fort, N.Y., Clearwater, S.C., and Buffalo, N.Y. Additionally, it has shipments from numerous receiving points in the East Coast from Massachusetts to Georgia, to points in the Southwest. Between [illegible] pounds move annually. Its Dallas, Tex. plant alone receives 1 million pounds annually from the East and Southeast. Practically all shipments are LTL weighing a minimum of 15,000 pounds. Most shipments weigh between 500 and 2,000 pounds. | Railway Express is used from Clearwater to the Southwest. Motor carriers from New England points (Transamerican, T.I.M.E., Roadway, and Consolidated are used from points in the Middle Atlantic territory to the Southwest. Roadway, T.I.M.E., Strickland, and Transamerican are used in single-line service. Roadway and Ryder are used from North and South Carolina. Dixie, Buckaboo, and Overnight are used from Clearwater to Atlanta. Thereafter interlining with Red Ball is used from Statesville to Texas. Dixie interlining with Gardner is used from Clearwater. Roadway has rendered a daily pickup service at Clearwater for a number of years. Shipper's private fleet is used to transport draperies from Augusta to Dallas. | Shipper has had difficulty in obtaining consistent transit time to Houston and Dallas, Tex. It indicates a need for the proposed second-day service from Clearwater to Dallas, Fort Worth, and Houston. Shipper prefers single-line service. Ryder's service from the Carolinas has not been satisfactory and shipper has discontinued using it. During April 1956, 20 shipments, which may not include all shipper's traffic between these points during this period, weighing collectively 89,775 pounds, moved from Clearwater to Dallas through Atlanta. They were handled by Dixie interlining with Jordons. Some of the transit times were not given, but on those listed two shipments required 11 days, two 8 days, four 7 days, four 6 days; and two 5 days, including weekends. Between May 9 and May 23, 1956, Roadway, in single-line service, handled eight shipments weighing collectively 19,918 pounds from Clearwater to Fort Worth and Dallas. Three required 7 days for delivery, two 6 days, one 5 days, and two 4 days. Between May 10 and May 22, 1956, Roadway handled 13 shipments weighing collectively 7,022 pounds to the same points. One of the shipments required 8 days, one 7 days, three 6 days, and four 5 days. Shipper does not consider the transit time satisfactory. | Johnson. |
| 2. (772) Springfield, Mass. | See shipper under Connecticut heading. | | | |
| 3. (857) Avco-Bay State Abrasive Products Company, Westboro, Mass. Abrasive products and grinding wheels | Outbound from Westboro to Houston, Tex., Shreveport and Ruston, La.; and Jackson, Miss. Shipments move every Friday to above points. Weight range is minimum to 30,000 pounds. | Spector, ETMF, Roadway, Johnson, T.I.M.E., Strickland. | Wants faster service with less damage. Allows 1 week transit time to Houston. Wants proposed 4-day service (including weekends) to Houston. | Johnson. Shipper only ships on Fridays. There are numerous combinations of joint-line service available to shipper which have been carried. Shipper fails to cite specific complaints. |
| 4. (8[illegible]) Sewall Sand Inc., Tell River, Mass. Draperies | From Tell [illegible] to points in [illegible], Mississippi, and Texas. Between 1,000 and 10,000 pounds in LTL lots are shipped to points in the destination States each day. | Yellow Fed., Strickland, Acme, Midland, Transamerican, Hemingway, Terminal, Lone Star, Edwards, AA, McClean, Johnson, T.I.M.E., Consolidated. | Wants faster transit time and single-line service to avoid delays and eliminate tracing problems. Shipper has experienced delays in pickup service and has discontinued using Roadway. | Johnson. Transamerican can serve shipper from its terminal in Providence, R.I. Shipper wants single-line service to Tex. |
| 5. (881) Charlestown, Waltham, Ashland, North Easton, and Watertown, Mass. | See shipper under New York heading. | | | |

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Summary of evidence of supporting shippers—Continued

MASSACHUSETTS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 8. (MC) Tim Tamboro Company, Tamboro, Mass. Instrumentation. | From Tamboro (minus carrier to Boston, Mass. or Providence, R.I.), to points in Texas and to Baton Rouge, La. During September 1966, shipper moved over 200 shipments to above destinations. Average LTL shipment was 56 pounds. | Texas, Strickland, Johnson, Interstate, T.I.M.E., Merchants, Red Ball, Adams, Davis, Control, Yellow, Various Airlines, Ahern. | Wants faster delivertime. Wants 4-day service. | Johnson. Strickland and several other carriers offer single-line service from Boston to points in Texas. Ahern also serves shipper and the latter has no specific complaints. |
| 7. (MC) (a) Ingot Plastics Inc., Worcester, Mass. Plastic housewares articles. (b) Worcester Co., Company, Worcester, Mass. Toys. | From Worcester to points in Texas, Louisiana, and Mississippi. Ships 2 million pounds a year to points in Texas, 1,000,000 pounds to points in Mississippi, and 250,000 pounds a year to points in Louisiana. Weight varies from 250 pounds to 1,000 pounds (LTL). | Johnson, ACE, Consolidated, Interstate, Republic, Nevada, Transamerican. | Has some difficulty getting pickups. Wants shorter transit time. Roadway refuses to originate this shipper's traffic apparently because of Union problems | Johnson. Shipper states generally that most two-line services have proven to be unsatisfactory. |
| 9. (MC) Sanford Spinning Company, New Bedford, Mass. Textiles. | From shipper's facilities at New Bedford, Fall River, and Hodgeville, Mass.; Hartford, Conn.; Warren and Lonsdale, R.I., Piedmont Valley, N.Y.; and Rockville, Conn., to points in Louisiana and Texas. During September 1966 shipper had 27 movements to points in Texas. Average weight was about 250 pounds. | Roadway, Transamerican, Johnson, Edwards | Wants better transit time. Applicant's proposal would give 90 percent better transit time. | Johnson. Shipper contends about 50 percent of the shipments |

MISSISSIPPI

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| 1. (LTL) Atlas Van Greenville, Miss. Low bidder outbound and files and bond tonnage inbound | From Greenville in LTL shipments to its branch warehouse in Atlanta, Ga. and to points in the United States. Approximately 30,000 pounds moves from Greenville each day with the shipments weighing between 125 and 7,000 pounds. It receives approximately 35,000 pounds a day of inbound shipments from all the points to which it ships. The shipments weigh between 25 and 100,000 pounds. The 100,000 pound shipments are handled by rail. Shipper specified a number of points in Texas, Louisiana, and New Mexico to which it ships. It ships to the points Red Ball serves and proposes to serve. | Gardenia transport LTL shipments from Greenville to shipper's branch warehouse at Atlanta in single-line service. Jones is used to Dallas and to Discount points. Shipper uses the services of Boston, Arkansas-Best, Red Line, Campbell, Roadway, ETSMMC, TSM, and Viking. Additionally, the irregular-route services of Eagle, Osborne, and Superior are utilized. | Shipper wants overnight or second morning service to the Southeast. It does not want its shipments interlined at Memphis or Jackson because it increases transit time by 2 days. Shipper stated that one of reasons for supporting Strickland is to get lower rates. It has a competitor at Shreveport, La. | Red Ball, Strickland, and Jones. |
| 2. (MC) Tim Tamboro Company, Tamboro, N.C. Industrial chemicals and laundry supplies. | Inbound to shipper's branches at Jackson, Miss. and Baton Rouge, La. Purchases shipments here from Boston, Mass.; New York, N.Y.; Hackettown and Philadelphia, Pa.; Baltimore, Md.; Washington, D.C.; Atlanta, Ga. and the Carolinas. To the Jackson branch between 60,000 and 70,000 pounds a month is shipped from the area served by Johnson. Baton Rouge tonnage is estimated to be between 50,000 and 60,000 pounds a month from the area Johnson serves. This traffic is both LTL and TL and does not include shipments handled by private carriage. | Shipper handles about 5 percent of its inbound shipments in private carriage. The TL shipments to Jackson move in private carriage or TOFC (Plan III). From Southern origins shipper uses Dixie, Red Ball, and Cole. From New England Associated interlining with Viking or Ryder, and Roadway interlining with Gardena. From Middle Atlantic Stanton, Associated or Atlantic interlining with Viking. Pilot interlining with Garvin or Ryder, Carolina interlining with Boston, Delaware interlining with Red Ball or Gardena, D.T. Crown interlining with West, Roadway interlining with Ryder, and Hamm | Shipper wants single-line service on its inbound traffic. It wants fifth-day service including holidays and weekends, from New England to Baton Rouge and Jackson. Transit time and consistency are important in order to maintain low inventories and properly serve customers. Shipper introduced an abstract of a random selection of 45 shipments made between 10/10/66 and 5/10/66 to show transit times from points on the East Coast to Jackson and Baton Rouge. Weekends and holidays are included in the computation. The transit times shown range as high as 6 days from points in Georgia, South and North Carolina; 12 days from New England, and 15 days from points in the Middle Atlantic States. | Branson and Johnson. Shipper has not made any study of the direct service it is receiving from Ryder to Jackson and Baton Rouge. Shipper has not attempted to use Johnson's service from New England to New Orleans and have a connecting carrier transport the shipments the remaining 98 miles to Baton Rouge. Ryder provides single-line service between Atlanta, Ga. and Jackson. Shipper has had claims problems with Ryder. |

114 M.C.C.





Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 3. (LTL) Green Plant, Inc. Fair or division sells the Greenville number of paper | The corporation coordinates inbound and outbound traffic and ships shipments with large lots that are facilities of the Fort and Public Terminal Transfer at Greenville. The port handles considerable quantities of inbound shipments from Chicago, Ill. and St. Louis, Mo., points in Indiana, Kentucky, Pennsylvania, and other points located on inland waterways in the midwest such as iron and steel articles, twine, grain, machinery, and other commodities. It is expected that by 1972 the transportation needs of Greenville will double the present needs. | | It is believed that additional service is required from Greenville to points in southeast Arkansas. | Strickland. |
| 4. (LTL) Building Products Company, Arkadelphia, Miss. Formerly | From Atlanta, Ga. shipper receives an average of four shipments a month with an average weight of 15,000 to 18,000 pounds. Shipper places an order every Wednesday or the traffic moves from Atlanta every Thursday. It requires service which will enable it to receive shipments on Monday. On rare occasions shipper's traffic moves directly to the customer in Greenville, Miss. | Dixie, Dixie, Georgia Central and West | Shipper wants Monday delivertime on shipments which move from Atlanta. Friday of every week if the shipments are not received on Monday. Shipper has been using the motor carriers necessary for its distribution which commences Tuesday of every week. Shipper is not satisfied with the transit time of the existing service. Transit times were shown on four shipments which moved during April 1966 from Atlanta to Arkadelphia. Three of the shipments [illegible] Cedar. One was handled by Georgia Highway interlining with West at Dodsie. The last shipment was shielded and involved 14 days in transit including weekends. The three handled by Dixie were delivered between 5 and 8 days including weekends. | Strickland. Shipper has not investigated the availability of direct service from Atlanta to Greenville. Ryder System, and Gardena serve from Atlanta to Jackson. Gardena must go through Memphis, Tenn. |
| 5. (LTL) Climate Engineers, Inc. Jackson, Miss. Heating and air conditioning equipment | Shipper receives at Jackson 10 shipments a month from Dallas or Houston, Tex. and Staunton, Va. which have an average weight between 100 and 500 pounds. Some of shipper's traffic moves from Dallas to Greenville, Miss. | Brownell, Red Ball, Central Freight and Merchants are used on the Texas traffic. Jones provides single-line service from Dallas to Greenville. From Staunton Associated interlining with Viking. | Shipper wants overnight delivery service from Dallas, 2-day service from Houston, and 5- or 6-day service from Staunton. It terminated shipping from its Atlanta supplier because of the transportation service from this point. If it received consistent overnight service it could replicate this traffic. Staunton traffic could be routed through Atlanta and handled by Associated interlining with Strickland if the application is granted. Shipper introduced a transit study showing (including 1 shipment requiring 10 days) on 17 shipments handled by Red Ball from Dallas (which represents one half of the traffic moving between these points during the period in question), excluding weekends, one shipment moved in 4 days and about one half the remainder were delivered in 2 or 3 days. Red Ball delivered one shipment from Houston in 2 days and one in 3 days. Also, excluding weekends Brownell delivered one from Houston in 2 days, Central interlining with Red Ball delivered a shipment from Clebourne, Tex. in 3 days, and Merchants interlining with Red Ball delivered a shipment from Winters, Tex. in 4 days. | Strickland. Shipper does not have any complaints about the service rendered by Jones but it would rather use the services of a carrier with whose personnel it is familiar in case of problems |
| 6. (LTL) National Industries, Inc. Jackson, Miss. Outbound - automobile parts. Inbound - machinery, brass, electronic, electric units and cable terminals | Inbound shipments to Jackson are received from, Michigan, Connecticut, Ohio, New Jersey, Georgia, West Virginia, North Carolina, Texas, and Pennsylvania in TL and LTL lots several times a month. The shipments are routed through the Atlanta, Ga., Houston and Dallas, Tex., and Memphis, Tenn. gateways. Outbound shipments from Jackson move to Dallas, San Antonio, and Grand Prairie, Tex., Conway and Forrest City, Ark., Louisville, Ga., and Milpitas and Benton, Miss. Its 30 or 40 outbound shipments each week weigh an average of about 150 pounds. Shipper expected to double its requirements in the next year. | Johnson, Boston, Red Ball, Ryder, ETSMMC, Viking, ICT, and T.I.M.E., Boston, Dixie, Ryder, and Cole are used between Jackson and Atlanta. Brownell and Red Ball serve from Jackson to Dallas | Shipper wants overnight service from Atlanta and Dallas, and second- or third-morning service from points in Michigan, Ohio, Pennsylvania, and New Jersey. A transit time study of shipments picked up sunday was introduced to show that the transit times shipper is receiving are not satisfactory | Strickland. |

114 M.C.C.

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Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 9. (167) Mississippi Wholesale Drug Company Jackson, Miss. Drugs, pharmaceuticals, and sundries | Inbound from Atlanta, Ga. to Jackson. Shipper's busy season for inbound traffic begins in September of each year and reaches its peak in December. During those months its inbound shipments are about 70 percent higher than the other months. Between 1/1/66 and 5/31/66 shipper received a total of 159 inbound shipments from Atlanta, weighing 43,451 pounds. The shipments weigh from a minimum to 8,000 pounds. Usually they are LTL shipments. Shipper experienced an increase in business in the first 5 months of 1966 and expected the increase to continue. | West, Deaton, and Cole. Also, Georgia Highway interlining with Campbell is used. ACF interlining with Campbell, Deaton, or West is used and United interlining with Campbell is used. | Shipper wants a consistent 2-day or second-morning service excluding Sundays. The receiving shipper wants a consistent 1-day or second-morning service excluding Sundays. The receiving department is open on Saturdays. Shipper wants morning deliveries but it has experienced difficulty in obtaining them from West and Ryder. Time in transit and consistency of service are important because shipper's stock is limited and it is allowed a two percent discount if it pays within 10 days of the invoice date (shipping date). A transit time study of every 150 shipments delivered in the first 5 months of 1966 was introduced. Sundays and holidays were included in the computation. About 110 of the shipments were delivered in 4 or less days with about 40 shipments delivered in 2 days or less. The majority of the remaining shipments were delivered in 5 days. | And Rail. Shipper indicates that it has a better claim ratio with Red Ball than with any other carrier it uses. |
| 8. (169) Gillis Supply Company, Inc., Jackson, Miss. Transformers, rods, nuts and bolts, and pole line hardware | Inbound to Jackson shipper receives two or three shipments a week from Birmingham, Ala. with a total weight on each shipment of between 4,000 and 10,000 pounds. Occasionally shipper receives inbound shipments from Tucker, Ga. Shipper's business had increased 50 percent in the year prior to the hearing over the previous year and it expected the increase to continue. | West is used. Campbell was used. | Shipper wants a consistent overnight service from Birmingham to Jackson. Time in transit is sometimes important because of emergency situations which result when a transformer ceases to operate. Shipper has experienced difficulty with Campbell on emergency shipments. It indicates that West is not providing a better service. A need is expressed for the proposed overnight service. | Red Ball. Shipper has not been satisfied with its service. |
| 9. (168) Mississippi Bearings Inc. Jackson, Miss. Bearings, pulleys, pillow blocks, belts, sprockets, and power transmission equipment. | Inbound to Jackson shipper receives movements daily from Atlanta, Ga. The shipments weigh from less than 100 pounds to 600 pounds. Occasionally it receives shipments weighing between 2,000 and 4,000 pounds. The average weight is between 100 and 200 pounds. | Cole, Ryder, Deaton, GFA, West, Alabama-Georgia, and both services are used from Atlanta to Jackson. Bus service is used for emergency shipments which require overnight service. Cole, West, Ryder, and Deaton render single-line service between Jackson and Atlanta. GFA interlines with West and Mobile, Ala. | Shipper is not satisfied with the service it receives from Atlanta. It expresses a need for second-day service, excluding weekends, on regular shipments. On emergency shipments it wants overnight service. Shipper introduced a transit time study covering 76 shipments which moved between 1/3/66 and 7/14/66. The shipments were handled in single- and joint-line service. A few of the shipments moved from points other than Atlanta. Including weekends about 45 of the shipments were delivered in 4 or less days. On the other hand, delivery sometimes required 6 days on one shipment from New York which moved through Atlanta delivery required 8 days). | Red Ball. Shipper is not familiar with the single-line or joint-line services available between Atlanta and Jackson. |
| 10. (169) Davis McDonald Drug Company Jackson, Miss. Drugs, Pharmaceuticals, and sundries | Inbound from Atlanta shipper receives several shipments a week at Jackson. The shipments weigh from less than 100 pounds to several hundred pounds. Occasionally shipper will receive shipments weighing between 4,000 and 5,000 pounds. The average shipment weighs between 100 and 200 pounds. | Cole, Deaton, Ryder, Campbell, GFA, East Texas, Bowman, West, GFA, Overnight, and ACF. Cole's single-line service is used to most of the traffic. The joint-line services of ACF interlining with West, Bowman interlining with West, Bowman interlining with Campbell, GFA interlining with Brasswell, GFA with Brasswell, GFA interlining with West, and ACF interlining with West, are used. Deaton's and Ryder's single-line service is used. | Eighty percent of shipper's pharmaceutical traffic requires protective service to avoid freezing and about one third of this traffic requires protective service when the temperature is above 95 degrees Fahrenheit. Shipper wants the proposed overnight service from Atlanta to Jackson as 65 percent of its traffic. A transit time study was introduced covering some of the shipments from Atlanta and from a few other points some of which traffic was routed through Atlanta to Jackson which moved between 1/17/66 and 7/14/66. The shipments were handled in single- and joint-line service. Of the approximately 100 shipments listed delivery was made in 5 or less days in the majority of cases including weekends. Some shipments had transit times of 6 days. | Red Ball. |





Summary of evidence of supporting shippers—Continued

MISSISSIPPI—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 11. (170) Addressograph-Multigraph Corporation, Jackson, Miss. Equipment related thereto, including machines and supplies | Inbound to Jackson shipper receives movements from the central, eastern, southeastern, and southwestern parts of the U.S. Of shipments, 60 percent of those from the southeast and some from the east coast, are interline at Atlanta, Ga. or Birmingham, Ala. Traffic moves from Los Angeles, Tex. and in some of this traffic dispatch will be made at shipper's ex- Monroe, La. Inasmuch some of shipper's traffic from the East Coast goes through the Nashville and Memphis, Tenn. gateways. | Jackson, Cole, Deaton, Fair Texas, Ryder, T.I.M.E., Viking, Red Ball, Dixie, Ch. Jackson, West, Interstate and A. & S. | Shipper wants 2-day service from Los Angeles and Grand Prairie, Tex. to Jackson. From Murray Hill, N.J., Lindenwold Hills, Maine and Holyoke, Mass., to Canton, Shipper wants not more than 6 to 10 day service. From Cleveland, Ohio to Jackson shipper expects 4 to 5 day service. Shipper introduced a transit time study on shipments picked at random. Transit times include weekends and holidays. The study indicates that excluding weekends and holidays, Red Ball provided 2-day service in most of the listed shipments from Grand Prairie (Dallas) Texas. Interline shipments from Lindenwald Hills and Holyoke shipper didn't know the originating carrier and it was unable to ascertain the transit time. Shipper asserts that the existing service is unsatisfactory because of slow transit time. | Strickland. Red Ball promised shipper 2-day service from Grand Prairie. |
| 12. (171) Cobe Electric Company, Jackson, Miss. Electrical equipment and supplies | Inbound to Jackson shipper receives shipments from Atlanta, Ga., and Dallas, Tex. Shipments weigh between 100 pounds and 1,000 pounds. | Cole, Deaton, West, GFA, Lenton, Riverside, ABC, McLean, Jordache, and Ryder. | Shipper wants overnight service from Atlanta and Dallas to Jackson. It also requires deliveries on Saturdays. Transit time is important because the items transported are not always stocked. An introduced transit study shows that during April 1966 (three shipments made during March were included) shipper had 19 shipments all but three of which moved over a weekend. Holidays and weekends were included in the computation of transit time. Six of the shipments moved from Atlanta. They were delivered by Ryder in 3, 4, and 5 days. One in 3 days, and by Deaton in 3 days. Six shipments moved from Dallas to Red Ball. One was delivered in 3 days, three in 4 days and two in 5 days. | Strickland. Applicant has proposed Saturday deliveries. |
| 13. (172) Modern Line Products Indianola, Miss. Outboard shoes, goods such as lawn mowers, rotary tillers, bicycles, and wagons. Inboard-paint. | From Indianola between 9/1/65 and 7/28/66 shipper moved 889,000 pounds to Atlanta, Ga. and 194,000 pounds to Birmingham, Ala. About 80 percent of this traffic or 17% with the remainder TL. Inbound to Indianola from Atlanta shipper received 1,500 pounds three times a week. Shipper expects a 10 percent increase in its business in the fiscal year beginning 9/1/66. | Cordora is used to and from Atlanta and Campbell to Birmingham. | Transit time is important to shipper as outbound traffic because most of its customers carry a small inventory. On inbound traffic transit time is also important because shipper does not maintain a large stock. On LTL shipments to Atlanta it allows 4 days for delivery. | Jones, Jackson and Campbell, unlike Jones, do not have a terminal in Indianola. Both of the terminals are located about 30 miles from Indianola. Shipper was not aware of any other single-line service between Indianola, Birmingham and Atlanta other than Cordora and Campbell and it has not investigated any joint service. Jones provides motor-van service to Atlanta and overnight service to Birmingham. Shipper has used Jones service and it is described as satisfactory. Bowman and Johnson. Shipper did not know either of the applicants existed until this proceeding began. It has not considered using applicants to originate the traffic and interline it at Atlanta. It did not know how many carriers offer single-line service between New York, Atlanta, and Memphis. |
| 14. (173) Ellington Electronics Supply, Inc. Jackson, Miss. Transistor, electronic supplies | Inbound to Jackson shipper receives shipments from Philadelphia, Pa., New York, N.Y., El Lebon, N.J., and West Los Angeles, Calif. Shipper receives about 1,000 pounds a month from primary suppliers in New York City. It receives three shipments weekly from Elizabeth, and at least one weekly from Bronx, N.Y., varying from a minimum to between 4,000 and 5,000 pounds. From Port Washington, N.Y. shipper receives at least once a week 3 cartons and from Arch Adams it receives 2 shipments each month. | Deaton-Dixon, Ryder, Pilot, CFA, West, Viking, Texas, and Campbell are used in two- and three-line service. | Shipper wants single-line service because present joint-line service increases the possibility of damage and increases the difficulty of tracing. It would like fourth-day service excluding weekends from eastern origins. Time in transit is very important because its owner advertises stock the serviced commodities. Shipper introduced or exhibit showing the trans.' times on a few of the shipments which moved from eastern origins between 12/1/65 and 4/1/66. Only those shipments which could be fully documented were shown and weekends were included. All but 2 of the 12 shipments moved from New York, N.Y., including the Bronx, and Elizabeth, N.J. The transit times were between 1 and 17 days with the average being about 6 days. | |

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Summary of evidence of supporting shippers—Continued

| Shipper, location and commodities | Origin, destination, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 15. (MC) Mississippi Bedding Company, Inc., Jackson, Miss. Private goods, fabrics, mattress ticking, tape, and spring. | Inbound to Jackson shipper receives traffic from North and South Carolina, New York, Georgia, Massachusetts, and New Hampshire. Inbound shipments weigh between 500 and 1,700 pounds each and weigh a total of 1,000 pounds monthly. They serve mainly from Pleasant Rapids, Rutherfordton, High Point, Mooresboro, Lincolnton, and Greensboro, N. C.; Chester, S. Wal. Superior, Harrisburg, Walhalla, Carlisle, and New Derry, S. C.; Augusta, Ft. Gordo, and Commerce, Ga.; New York, N. Y.; Portsmouth, R.I.; and Canton, Miss. | Gardner, Carolina, Jewett, Overnight, Cole, Ryder, Johnson, Rowdoney, Volunteer, Brassell, St. Johnsbury, T.I.M.E., Viking, Pearson, Tennessee-Carolina Buchanan, Cape Cod, Burnett, White and Pfeiffer. | Shipper wants second-morning service from Georgia and the Carolinas and 4- to 5-day service from points in New Hampshire, Massachusetts, and New York. Transit time is important because shipper keeps its inventory low. Inventors are shipper prefers single-line service because it facilitates the tracing of shipments. It introduced an earlier observing the transit times on about 90 percent of the shipments from the involved origins between 11/1/61 and 4/1/62. Roadways data included in the computation. Of the 40 shipments listed, most moved from Carolina points in between 2 days and 11 days. Shipments from Georgia involved transit times of between 3 day and 5 days. From New Hampshire and Massachusetts the transit times were between 7 days and 11 days. From New York, N.Y. between 6 days and 9 days. | Business and personal interest cost because shipper can serve most of its origin points in less than seven days, or serve Portsmouth, N.H., and Canton, Miss. Present shortage are selected by consignee and shipper only indicates to consignees which carriers are not to be used. |
| 16. (MC) Knox Point, Miss. | See shipper under South Carolina heading | | | |
| 17. (MC) Greenwood, Miss. | See shipper under Arkansas heading | | | |
| 18. (MC) U S Gypsum Company Dallas, Tex. Board and fiber wallboard and paint | From its Greenville, Miss. plant shipper moves about 200,000 pounds a month to Dallas, Houston, Tyler, Longview, Waco, Beaumont, Wichita Falls, and other major points in Texas. It also ships from Greenville to New Orleans, Baton Rouge, Shreveport, Alexandria, Lafayette, Bogalusa, and other points in Louisiana. Additionally, it ships approximately 75,000 pounds a month from its Dallas plant to Greenville | Jones is primarily used. Occasionally, Campbell, Gardner, and Beaton are used from Greenville. Jones provide privileges service. | Shipper requires protective service insulated trailers for its water base paint in order to keep it from freezing. Jones service generally is not satisfactory because it does not serve all points in Texas and shipper has experienced tracing problems with this carrier. Shipper has continued to Jones and the service has improved. Occasionally Beaton owner equip equipment. | Red Ball and Strickland. |
| 19. (MC) Greenville and Jackson, Miss. | See shipper under Texas heading | | | |
| 20. (MC) Lindsay Wire Weaving Company Florence, Ala. Steel wire cards, rods and tubes | From points on the eastern seaboard to Florence. From 1/56 thru 8/56 shipper received 10 shipments with an average weight of 500 pounds. From Florence to points in Alabama (one shipment a month), Georgia (one shipment every 3 weeks), Florida (one shipment each month), South Carolina (one shipment every 3 months), Virginia (one shipment every 25 weeks), Pennsylvania (one shipment every 2 weeks), New York (one shipment every 2 weeks). Each shipment weighs about 1,000 pounds. | Cole, Thomas, Shipmore, West, Dunning, Mason, Johnson, Viking | Needs faster, more dependable service. Allows lead time of 7 days to Alabama and Georgia points and about 10 days to Florida, Virginia and South Carolina points. Shipper's transit study consists of only those shipments on which it received unsatisfactory service. It shows 10 shipments with [illegible] days. Wants 2-day service from Florence to Alabama and Georgia points, 3-day service to Florida, South Carolina and Virginia and less than a weeks service to New York. Transit time in the size shipper is billed on an 80 cwt. shipment can meet to carrier. Average transit time is 5 days. Times picked at random. Needs 2-day service from Carolinas, 3-day service from 23d Atlantic and 4-day service from New England. | Johnson and Beaton |
| 21. (MC) Gulf Manufacturers Inc. Jackson, Miss. Textiles | From Rhode Island, North Carolina, South Carolina, Georgia, Virginia, Alabama and New York, N.Y. to Jackson. Receives 50,000 to 60,000 pounds monthly. Average shipment weighs 500 to 1,000 pounds. From 12/1/61 through 6/6/62 shipper had 36 shipments to above areas. | Roadway, Gardner, Ware, Dart, TCG, Viking, Strickland, Campbell 66, HDD, Thomasville, N.C., Riverside, Dale | Beaton and Johnson |
| 22. (MC) American Paper Tube Co. Port Gibson, Miss. (50 miles west of Jackson). Synthetic paper and phenolically impregnated fabric tube textile industry. | From Lawrence, Mass., to Port Gibson. From Port Gibson to points in Georgia, Alabama, Pennsylvania, North Carolina, South Carolina, Connecticut, New Hampshire, and Tennessee. Inbound shipments range between 263 and 4,441 pounds monthly. Outbound shipments range between 50 pounds and 1,260 pounds monthly. | T.I.M.E., Viking, Red Ball, Southeastern, Dunton, Shippers Express, HDD, Roadway, Brassell, Eldredge, Cooperite, Lawton, Ryder, Piedmont, Orlando Asheville, Jack Cole, Greenwood, Peerless, Montgomery | Service accepts only shipments it can handle in direct service and has a two-line restriction in its southern territory tariff. Wants 4-day service inbound, and faster service outbound. Average transit time is 10.5 days on inbound shipments from Lawrence. Shipper generally plans on about 10-day and 14-day service to South Carolina. | Beaton, Johnson. Transit time given does not include all shipments during period. |





Summary of evidence of supporting shippers—Continued

| Shipper, location and commodities | Origin, destination, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] | Inbound to Jackson shipper receives traffic from Chicago, Ill. and Atlanta, Ga. The shipments weigh between 10 and 1,500 pounds. | Red Ball, ITD, Ryder, Brassell, Carolina, and Ryder. Needs roadway single-line service from Atlanta to Jackson, and Red Ball and Brassell, which provide direct service from Dallas to Jackson. | Shipper's customers complain about transit time from Atlanta and Dallas to Jackson. They have stated that if transit time does not improve they will purchase from shipper's competitors in New Orleans, La. that way they can obtain overnight service. | Strickland. |
| [illegible] | From Dallas, Tex. to Jackson, Meridian, Greenville, and Belzoni, Miss. From [illegible] ranging between [illegible] | [illegible] Red Ball. | Needs faster service. Over the 6,000 a week load time average transit time to Jackson is 5.0 days including weekends. | Strickland. Transit time study represents one-third of traffic received during period. |
| [illegible] Bell And Lilco Co. Jackson, Miss. Beds, mattresses, springs and related items. | From Statesville, N.C., and New Britain, Stanton, and Hartford, Conn., to Jackson. About 50 shipments yearly, weights ranging between 65 pounds and 1,575 pounds. | Dixie, West, Carolina, Ryder, Campbell, Johnson, Strickland, Carolina, Lawton, Delmar. | Needs faster service. Shipper wants 4-day service from Statesville, N.C., and 5-day service from the New England area. Average transit time is 7 days including weekends. | Beaton, Johnson. Shipper received Ryder's origination service from Statesville, N.C., but was cancelled because of delays. Transit times computed include all shipments. Jones. Shipper wants overnight service. Transit study does not include all shipments during period covered. Strickland. Transit time study does not include all shipments during the period in question. |
| [illegible] Manufacturing Co. Jackson, Miss. Carpets and related goods | From Dalton, and Rome, Ga., Hickory, N.C., Fulton, Mo., Joliet, Ill., and Austin, Texas, and Dallas, Tex., to Jackson. | Ryder, Brassell, Red Ball, Carlisle. | Needs faster service. Average transit time 5 days including weekends. | Strickland. Transit time study does not include all shipments during the study period. |
| [illegible] Mississippi Distributor, Inc. Jackson, Miss. Tinplate, corrugated boxes, paper bags, paperboard, wax jugs, and other office supplies items. | From Atlanta, Ga., Birmingham, Ala., Dallas and Houston, Tex., to Jackson. Between 40 and 50 shipments a month ranging between 75 and 1,000 pounds. | Jack Cole, Ryder, Brassell, West, Campbell, Dixie, Dunton, Red Ball. | Needs faster, better time coordinated service. Wants overnight service. Average number of days in transit is [illegible]. | Strickland. Transit study does not include all shipments during the study period. |
| [illegible] Industrial Traction Co., Inc. Jackson, Miss. Agricultural implements and machinery parts. | From Atlanta, and Cedartown, Ga., Charlotte, N.C., and Shreveport, La., to Jackson. Between 8 and 10 shipments a month ranging between 100 and 1,000 pounds. | Jack Cole, Ryder, Red Ball. | Needs faster delivery. Wants overnight service. The only shipment in the introduced transit time study shows 4 days elapsed time from Cedartown to Jackson. | Strickland. |
| [illegible] Papaliolo Bottling Co. of Jackson, Inc. Jackson, Miss. Cardboard cartons, glass bottles, crowns, caps, etc. | From Atlanta, Ga., and Dallas, Tex. to Jackson. Shipments range between 200 pounds and [illegible]. | West, Jack Cole, Campbell. | Needs faster service. Wants overnight service. Average transit time is 3.7 days. | Strickland. Shipper [illegible] customary influence [illegible]. In this connection it showed traffic from Atlanta and Dallas. Transit study does not cover all shipments. Dunbar, Jones. |
| [illegible] Wood Marine Supply Co. Greenville, Miss. Chemicals, engine supplies and equipment. | From Atlanta, Ga., to Greenville, Miss. Between one and three shipments monthly weighing about 1,500 pounds. | Dixie, Gardner, Ryder, Dunton, Campbell, Shippers Exp. | Needs faster service. Wants overnight service. | |
| [illegible] Heating Supply, Inc. Greenville, Miss. Heating and air conditioning equipment. | From Atlanta, Ga., to Greenville and return. From Birmingham, Ala., to Greenville. Between 15 and 17 shipments during summer months ranging between 500 and 600 pounds. Shipments range between 225 and 1,000 pounds. | Ryder, Dunn, Jack Cole, Campbell, Gardner, Hester, Shippers Exp., [illegible]. | Cost-line service inadequate. Wants overnight service. Average transit time is 5 days including weekends. | Beaton, Johnson. Traffic received. Transit study does not include all shipments during the period. |
| [illegible] Metal Trims Inc. Jackson, Miss. Aluminum specialties fabrications. | From points in New Hampshire, New Jersey, North Carolina, Pennsylvania, Tennessee, Georgia and Alabama to Jackson. From Jackson to Washington, D.C., North Carolina, South Carolina, Virginia, Georgia, and Alabama. Inbound about 150,000 pounds monthly and outbound about 40,000 pounds monthly. | Campbell, Dunton, Gardner, Viking, West, Strickland, Pine, Cooper, GMC, Cooper, Associated, Pilot, Dixie. | Cost-line service inadequate. Wants faster transit time. Average transit time from New Jersey, New Hampshire, and Pennsylvania is [illegible]. 5.1 days from Georgia [illegible] days from North Carolina, and 11 days from Tennessee, including weekends. The figures given for Alabama [illegible]. | Beaton, Johnson. Specific origination was not Gardner. Transit time study does not include all shipments during the period. |

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*Summary of evidence of supporting shippers—Continued*

MISSISSIPPI—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 36. (502) Automotive Supplies Jackson, Miss. Auto parts | From points in New York, Pennsylvania, Connecticut, Massachusetts and Maryland to Jackson. Monthly 1% and 13% shipments ranging between 25,000 and 30,000 pounds. | Ryder, Associated, Gardner, Ryder, Carolina Haven & Stone, Morrison, Delaware, Mo. Pac., Brandt, Gilbert, Jones, Viking, Dealers, Dixie, Cole | Joint-line service inadequate. Wants faster transit service. Average transit time 5 days including weekends. | Seaman, Johnson. Transit study does not include all shipments during the period. |
| 37. (504) Hanna Rubber & Supply Company Jackson, Miss. Cosmetics and rubber beauty supplies | From Long Island Sound, Brooklyn and New York, N.Y., Jersey City, N.J., and Philadelphia, Pa., to Jackson, approximately 60,000 pounds yearly. | Adams, Overton, Gordons, Haven & Stone, T.I.M.E. Viking, West, B.C. Northeast Trans. Service, Continental Southwest | Joint-line service inadequate. Wants single-line thr faster service. Average transit time is 7 days, including weekends from all origins. | Seaman, Johnson. Transit time does not include all shipments. |
| 38. (505) Georgetown Manufacturing Co. Jackson, Miss. Outdoor riding and working supplies | From Jackson to points in Rhode Island, Virginia, Massachusetts, New York, South Carolina, Maryland, New Jersey, Pennsylvania, North Carolina, Connecticut and Washington, D. C. Daily shipments range between 50 and 500 pounds. | Dixie, Eastern, Gordons, Ryder, Southern, Haven & Stone, Russell Miller, West | Joint-line service inadequate | Seaman, Johnson |
| 39. (506) Paine Refrigeration Supply Co. Jackson, Miss. Refrigeration and sheet metal supplies | From Decatur and Atlanta, Ga., to Jackson between 10 and 15 shipments a month ranging between 100 and 1,500 pounds. | West, Ryder, Gardner, Jack Cole | Wants faster service. Wants overnight service. Average transit time is 4 days, including weekends | Strickland. Transit study does not include all shipments made during period. |
| 40. (528) Tennessee Pipe & Supply Co., Inc., Jackson, Miss. Plumbing, heating and air-conditioning supplies and equipment | From Atlanta, Ga., and Dallas, Tex., to Jackson. Monthly shipments ranging between 100 and 1,500 pounds. | Ryder, Cole, Dixie, Red Ball, Harris | Wants faster service. Wants overnight service. Average transit time is 6 days, including weekends | Strickland. Shipper feels that it should receive overnight service from both Atlanta and Dallas. Transit study does not include all shipments during the period. |
| 41. (508) Industrial Supply Co., Inc. Greenville-Miss. Industrial, mill and electrical supplies | From Atlanta and Rome, Ga., Birmingham, Ala., Wilmington, Del., Baltimore, Md., and New Brighton, Pa., to Greenville. Between 25 and 30 shipments monthly, ranging between 500 and 1,500 pounds. | East Texas, Red Line | Needs more consistent service. Wants overnight service. Average time is 5 days, including weekends | Strickland. Transit time presented was selected to show poor transit time, and does not include all shipments during the period. Seaman, Brennan |
| 42. (533) Sowell Manufacturing Co. Greenwood, Miss. Pigeons | From Greenwood to points in Georgia, Alabama, Florida, North Carolina, and Tennessee. Weekly shipments range between 100 and 2,000 pounds. | Gulley, Gardner, Campbell, Arlington, Brown, Jones, Jones (TTMC), Taylor, Ohio, Hunt & Hirliman | Joint-line service inadequate. Wants overnight service to Georgia and Alabama, second day service to North Carolina and third-day service to Florida. | |
| 43. (539) Lewis Grocer Co. Indianola, Miss. Drugs, notions, candy and cigars | From Atlanta, Ga., to Indianola. About 15 shipments weekly averaging 3,000 pounds | Campbell, Gardner, Viking, Jones, United, Georgia Highway, Ryder, Hunter, West | Wants single-line service. Wants overnight service. Average transit time is 6 days, including weekends | Seaman. Transit study does not include all shipments during period covered. |
| 44. (547) Mississippi Refrigeration Company Jackson, Miss. Compressors, electrical motors, sheet metal materials. | From Atlanta, Ga., and Birmingham, Ala., to Jackson. Weekly shipments ranging between 100 pounds and 2,000 pounds. | Dixie, Ryder, Campbell, Main West | Wants faster service. Average time in transit is 3.1 days, including weekends. | Strickland. Transit study only covered about 40 percent of traffic during period. |





*Summary of evidence of supporting shippers—Continued*

MISSISSIPPI—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 45. (556) Rexall Distributing Company Jackson, Miss. Drug store commodities. | From Atlanta, Ga., Fort Worth and Dallas, Tex., to Jackson. Between 30 and 40 shipments monthly, approximately 2,000 pounds a shipment. | Dixie, Dixie, Ryder, Campbell, Seaton, West, Braswell, Red Ball | Joint-line service inadequate. Wants overnight service. Average transit time is 4.8 days, including weekends. | Strickland. Transit study does not include all shipments during period covered. |
| 46. (558) Optimist Advertising Company Jackson, Miss. Lights and displays. | From Washington and Baltimore, Md., to Jackson weekly shipments range between 200 and 1,- pounds | Ryder, Seaton, Ryder, West, Haven & Stone | Wants faster service. Wants 24-hour or 48-hour service. Average transit time is 4 days, including weekends. | Seaman, Johnson. Transit study includes all shipments during period covered. |
| 47. (561) Hayes Bus Lodge Co. Jackson, Miss. Electrical supplies | [illegible] Tex. to Jackson. | Braswell, Dixie, Red Ball, Herrell, Campbell, Dealers, Seaton, West, East Texas, Ryder, Georgia-Florida-Alabama Express | Would like faster service. Wants overnight service. Average transit time 5.9 days, including weekends | Strickland. Transit study includes three shipments during period with others prior to hearing |
| 48. (572) Herrell Tank & Fabricators Jackson, Miss. Lighting fixtures. | From Atlanta, Ga., Chattanooga, Tenn., and Mineral Wells, and Dallas, Tex. [illegible] ons. Approximately [illegible] shipments monthly. | Ryder, Dixie, Dixie, Control | Needs faster service. Wants overnight service from Atlanta and Dallas | Strickland. No preference between single-line and joint-line. Prefer through service. |
| 49. (577) Flintkote Co. [illegible] | From shipper's facility at Meridian, Miss. to points in Georgia, South Carolina and [illegible] shipments weekly. | Seaton, Dixie Highway, West, Campbell, [illegible] equipment | Joint-line service inadequate | Seaman. Shipper uses here single-line service to some Georgia points. Commodities require flat-bed or conventional equipment. Dixie and Seaton |
| 50. (578) Ballard Lockers, Inc., St. Louis, Mo. Mutual Lockers, [illegible] lockerage, gym sets. | From shipper's Greenwood, Miss. plant to Atlanta, Ga. 141,000 pounds LTL during August 1961, Birmingham, Ala. 132,100 pounds LTL and points in Florida 137,100 pounds LTL). | [illegible] | Wants single-line service to Atlanta and Birmingham and to Florida using Bowman or interchange from the above points. Presently service is slow. Wants overnight service to Birmingham and Atlanta. Wants 2-day service to northern Florida and 3-day service to southern Florida. | |
| 51. (584) Southern Refrigerator Transit Vicksburg, Miss. Iron, shelving and accessories | From Wilkes-Barre, Pa., and Atlanta, to to Vicksburg. Receives 8 to 10 shipments a year from Wilkes-Barre LTL weighing 150 pounds. Receives six to seven shipments a year from Atlanta LTL weighing 250 pounds. | Hall, Red Ba... Trans., Ryder, Kluger Exp., Dixie, Seaton | Wants overnight delivery to Atlanta and generally faster service. Company is allowing 3 weeks lead time from Wilkes-Barre. Wants 3-day service from Vicksburg and overnight service from Atlanta. | Seaman. Seaton can serve Atlanta directly. |
| 52. (733) R.E. Lefforthman, Inc. Vicksburg, Miss. General commodities | From Highpoint 10 LTL a year, 700 pounds), Statesville 15 LTL a year, 750 pounds), and Charlotte, N.C. 12 LTL a month, 2,500 pounds), Atlanta 120 LTL a year), and Jonesboro, Ga. (occasional), Birmingham, Ala. 12 LTL a month), and Baltimore, Md. (occasional), to Vicksburg. | Byrd, Ryder, Red Ball Thoerock, Dixie, Bowman, West, Old, Seaton, Kluger Exp., Cole, Jenkins | Present transit time too long. Wants Bowman's responsible single-line service. Average transit time about 4 days. Wants 3-day service from Baltimore. Wants single-line service Georgia and Alabama and 2-day service from Maryland. | Seaman. Present service seems to be adequate. Shipper admits that Dail's service is good. |
| 53. (907) Meridian Manufacturing Company, Division of Norton Co., Inc. Meridian, Miss. Piece goods and clothing. | From Meridian to points in Alabama, Tennessee, North Carolina, South Carolina, Georgia, and Florida. Ships daily to the above areas. No tonnage given. From points in the eastern seaboard to Meridian. For a 3.5-month period shipper received 61 shipments ranging in weight from minimum [illegible],102 pounds. | Bowman, Dixie, Campbell, Ryder, West, Dixie, Seaton, Watson, Old, Gallion, Tenn. White Tornillon, Brown, R.E.L., Greenville, Tenn. R.E.L. | Wants faster service. Average transit time 7 days including weekends. Wants overnight service to Alabama, Georgia, northern Florida, and South Carolina. 2 days to central Florida, third-day service to southern Florida, and third-day service to eastern seaboard. | Seaman. Shipper is using service which service is poor but it can use Bowman interlining with Campbell to all points contained and it indicates their service is good. |

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*Summary of evidence of supporting shippers—Continued*

MISCELLANEOUS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| (617) Allen Group, | See shipper under Pennsylvania heading. | | | |
| (Name) Box Company Division, ... ing corrugated. | From shipper's plant at Meridian to points in Georgia, North Carolina, South Carolina, and Virginia. During 1966 shipper had about 245 shipments to the Jacksonville territory. Average shipment weighed about 12,000 pounds. | Dykes, Dixie, Hoot, Campbell, Dixie | Want single-line service. Allows 1 to 2 days lead time to involved area. Wants 2-to truck service. | Bowman. There are no specific complaints. |
| (612) United States Plywood Corporation ...ourts, Rice Growers Assoc. | Shipper wants single-line service from Laurel to Atlanta, Ga. Tonnage ranges between 2 and 3 million pounds a year. | Dixie, Hoot, Bowman, Viking, Akers, Homelstad, Pilot, Dykes, Campbell, Old Dominion, St Johnsbury | Lost single-line service to Atlanta Gateway. Allows it to Carolina and Virginia points. Wants truck or fourth-morning service. In 1967 Campbell requested shipper to route its LTL shipments by other carriers | Bowman. Shipper can use many other gateways to deliver goods to the East Coast |
| (Name) | | | | |
| (Name) Springfield, Mo. | See shipper under North Carolina heading. | | | |
| (Name) Springfield, Mo. | See shipper under Georgia heading. | | | |
| (Name) Flip-Top Cap Corporation, ... York, N.Y. Paper caps, containers, and related paper and plastic products | (1) From shipper's plant at Springfield, Mo. to Birmingham, Mobile, and Montgomery, Ala.; Chattanooga, Tenn.; Atlanta and Augusta, Ga.; Jacksonville, Tampa and Miami, Fla.; Charleston, Columbia, and Greenville, S.C.; and Asheville, Winston-Salem, Charlotte and Raleigh, N.C., (2) from shipper's Augusta plant to Springfield, Mo.; Little Rock, Ark.; Jackson, Miami, Vicksburg and Meridian, Miss.; New Orleans, Baton Rouge, and Shreveport, La.; and Dallas, Fort Worth and Houston, Tex.; and (3) from Holmdel and Hackensack, N.J. to shipper's plant at Springfield. During 1967, it shipped from Springfield to points in the named destination States 3.3 million pounds, and from Augusta it shipped 6 million pounds. Inbound, from Holmdel and Hackensack, to Springfield, it ships about 10,000 pounds monthly. About 50 percent of the traffic moved in LTL lots. The LTL shipments average about 1,500 pounds and the TL shipments weigh about 24,000 pounds. | From Springfield shipper uses Campbell interlining with Dykes, Hall, Thornton, and CTCMMC; T.I.M.E., Campbell, Eastern Gillette interlining with Dorchester, and Lannay interlining with Spencer. From Augusta shipper uses Bowman interlining with Hoot, Dixie interlining with Gardner, Johnson interlining with Campbell, Bowman interlining with Red Ball, Dorchester interlining with T.I.M.E., Midwest interlining with Bowman; Spencer interlining with Bowman, Johnson, and Spencer. Shipper has also used Brown, Daggett, and Cunningham. | Shipper is not satisfied with the transit time it receives from Augusta and the New Jersey points to the Southwest. It wants second- or third-day service, including weekends, on TL shipments from Springfield to points in North and South Carolina. Shipper has commenced using warehouses in Tampa, Miami, and Dallas, but would have overnight service if it received satisfactory transportation service. Transit time is important because shipper's customers have limited inventories. After initially refusing to assign an interlined shipment from Bowman moving from Springfield to Florida, Tennessee cancelled its commitment on this traffic. Shipper introduced a transit time study on 44 shipments from Springfield. Transit times are given on 10 of the shipments which moved between 4/21/68 and 5/7/68. Six shipments moved to North and South Carolina. Including weekends, three shipments were delivered in 5 days, one in 6 days and one in 7 days. Seven shipments were delivered to points in Alabama. One shipment was delivered in 3 days, including weekends, of the other shipments to Alabama, one shipment was delivered in 4 days, two were delivered in 5 days, and one was delivered in 7 days. Including a weekend and a holiday, one shipment was delivered in 7 days and another in 9 days. Three shipments moved to Chattanooga. Two of these were delivered in 4 days, and one, including a weekend, required 11 days. | Bowman, Johnson and Jones |
| (Name) Owens-Illinois | See Shipper under Texas heading | | | |





*Summary of evidence of supporting shippers—Continued*

MISCELLANEOUS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| (607) Butler Manufacturing ... Kansas City, Mo. Prefabricated ... steel buildings, ... | From Kansas City to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. Monthly LTL and TL shipments range between ... and 30,000 pounds. | Jordons, Trucks, Watson Wilson, Cliff, Tropicana, GMC, WCF, Dykes, Fullmer, Arkansas Best, | ... single-line service ... truck, ... between ... and ... days. | Bowman. Protests CMC ... plaint against Watson-Wilson. |
| (Name) ... Kansas City, Mo. ... ing equipment. | From Kansas City to ... in Alabama, Florida, Georgia, and Tennessee. Monthly shipments range between 50 and 15,000 pounds. | Watson Wilson, Jordons, Arkansas Best, Trucks, ... Southern K.B. | ... assure delivery to small ... and ... between 1 and 3 day service. | Bowman, Jones. |
| (Name) ... Kansas City, Mo. ... ing equipment. | From Kansas City to Atlanta, ... Rice, and Birmingham, Ala. Monthly shipments range between 1,700 and 2,500 pounds. | ... Dykes, W.T.M.E., Jordons | ... service ... Existing services have been rendering adequate ... | Red Ball. General complaints only. Shipper has never ... single-line ... of Watson-Wilson to Atlanta. Some vehicles are required to transport the involved commodities. |
| (Name) ... ware products, ... Kansas City, Mo. ... ering items and related paper ... | From Kansas City to points in Florida ... ranges between 1 and 1,000 pounds. | Allen Campbell, Jordons, Bowman, Texas, Dykes, T.I.M.E., Thornton, Watson-Wilson, Grimsley, T.I.M.E. | Joint line service inadequate. Shortages, pickups and delays with existing service. | Bowman. |
| (Name) L.T. Cain Company, Brookfield, Mo. Toilet preparations and drugs | From Kansas City, Mo. to Atlanta, Ga., Birmingham, Ala. and Greenville, Miss. Monthly shipments ranging between 250 and 1,000 pounds. | Watson, Jordons, Transon, Watson-Wilson, Hoolmby, T.I.M.E., Dykes, Other. | Uniform dependable service. | Red Ball. Shipper is satisfied with ... to Atlanta, ... Bowman, Campbell and ... serve shipper ... single-line service to Greenville with the exception of Bowman. There are no specific complaints against existing carriers. Bowman. Shipper states that it has no complaints with existing direct service between Kansas City, on the West, and Atlanta, Ga., to the other. |
| (Name) ... Kansas City, Mo. ... vending machines | From Kansas City to points in Alabama, Florida and Georgia. Weekly shipments range between 250 and 2,000 pounds. | T-C Hall, Bowman, Transon, Georgia-Florida, Jordons, Campbell, Hoolmby, Watson-Wilson, T.I.M.E. | To meet competition in the involved area because of customer complaints. | |
| (Name) T-Dollar Service Corp., Kansas City, Mo. Coin ... and automatic ... clothing | From Kansas City to Birmingham, Ala., and return. Weekly shipments range between ... pounds and 47,000 pounds. | Watson, Jordons, Old Texas | Needs faster service and better pickup. Wants 5-day service. Average transit time is said to be 9 to 5 days. | Red Ball. General complaints |
| (Name) Thane Bag Co., Inc., Kansas City, Mo. Paper ... | From Leeland, Texas, to Kansas ... Monthly shipments range between 1,227 and 5,742 pounds. | ... T.I.M.E., JHL, Youngblood, Thornton | Want faster service. Wants 4- to 5-day service. Average transit time is now 6.5 days, including weekends. | Bowman. Shipper considers transit time too slow. Even if study does not include all shipments for ... period covered. |
| (Name) Wilson Electric Co., Inc., Kansas City, Mo. Radio equipment and supplies. | From Kansas City to points in Florida, Georgia, and South Carolina. From Gainesville, Fla. to Kansas City. Inbound, about 100 shipments yearly, averaging about 225 pounds. Outbound, shipments range between 11 and 100 pounds. | Central, T.I.M.E., Yale, Parvin, Fish | Want single-line service. Average transit time is said to be between 1 and 4 days. | Bowman, Jones. |
| (Name) Kansas City Western Express, Inc., Kansas City, Mo. Vehicle ... commodities. | From Kansas City, Mo., to Atlanta, Ga. and Birmingham, Ala., and return. | None | To establish concurrence with Jones for service. Forty destination points involved in overnight service. | Jones. No information of whether ... in concurrence with other carriers. No volume, type, or frequency of traffic given. |
| (Name) Scotia-Boone Manufacturing Co., Kansas City, Mo. Insulation materials, glass fibre, industrial piping products, safety ... | From Kansas City to points in Alabama, Florida, North Carolina, South Carolina and Tennessee. Monthly TL and LTL shipments range between 51 and 13,57... pounds. | Campbell, Bowman, Central, Daggett, Watson-Wilson, Alabama Highway, Thornton, Gaddway, Viking, Tombstone-Gilliam, Bob, ... Wil, JTL, Wil, Brim, Bowman, T.I.M.E., Dykes, CTCMMC, Transcon | Joint-line service inadequate. Transit-times range between 3 and 5 days. | Bowman, Jones, Red Ball. |
| (Name) Fairbanks Morse Co., Kansas City, Mo. Pumps | From Kansas City to points in Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina and Tennessee. Monthly shipments range between 10,000 and 35,000 pounds. | ... Watson-Wilson, Hoolmby, Transcon, Tombstone, Dykes. | Prefers a single-line service ... transit time to Florida averages between a week and ... days. | Thornton, Transon, Red Ba... |

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Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 27. (7111) Hanson Products Company, Steubenville, O., and Quarrette Shillings Company, Quarrette, Ark. Plastic polymer cornsils and soft corrosive gels. | From Steubenville to Alabama, 15 shipments in 1966), Georgia (40 shipments), and Florida (34 shipments). Each shipment averages 500 pounds. From Quarrette to same destination points as above, from shipper's warehouse at St. Louis, Mo., to Birmingham, Ala. and Atlanta, Ga. | Humeraville or Quarrette to Springfield, Mo., and interchange with T.I.M.E. to Atlanta and Campbell to Birmingham. Service from St. Louis, Campbell and Jones from Evansville. | Interline with as many as three or four carriers. The most handling of product, which is in cardboard cases, causes damage. Fast service would speed up deliveries. Wants equipment second day service from Springfield to Atlanta and Birmingham, third morning service from Springfield to northern Florida, and fourth morning to southern Florida. Wants 2-day service to Magnolia, Ark. Wants 2-day service from Quarrette to Atlanta and Birmingham. Wants 2-day service from St. Louis to Atlanta. | Jones and Roadway. |
| 28. (7112) Hutchens and Son Metal Products Inc., Springfield and Marshfield, Mo. Freight trailer parts and chassis | From Marshfield to Atlanta, Ga. (8 to 10 shipments a month) and Texarkana, Ark. (1 shipment a week). Each shipment weighs from 600 to 1,500 pounds. Also from Marshfield to Atlanta, and then interchange to points south thereof (10 to 15 shipments a month). | Dalton, Uptown-Atlanta Roadway, T.I.M.E., and Campbell to Atlanta by interchange. Campbell to Texarkana (with interchange). | Wants direct service to Atlanta for faster deliveries to Atlanta, and for interchange to points south. Wants 2-day service from Marshfield to Texarkana and Atlanta. | Jones. |
| 29. (7113) W.F.O. Parting, Springfield, Mo. Process, bonnet, and hanging waste | From Springfield to Atlanta, Ga. and Birmingham, Ala. (one or two TL a week). Each load weighs between 35,000 and 42,000 pounds. | Campbell, Watson-Wilson, T.I.M.E. | Has had difficulty getting previously to provide equipment with rails to transport hanging beef. Wants 2-day service to Atlanta and Birmingham, and 3-day service to Springfield. | Jones and Roadway. Refrigerated equipment is required. All movements in the past were made under contract. Shipper has not bid on such a contract for over 5 years. It states that if it had appropriate equipment available it would bid on contracts. Roadway. |
| 30. (7114) Champion Corporation, Kansas City, Mo. Investigation | From Kansas City to points in Florida. Shipper moves about 1.5 million pounds a year to Florida or nearby FL area. | Campbell, Transcon, Watson-Wilson, Gardner, Roadway. | Present joint-line service is slow. Wants single-line service to Florida. Wants third morning delivery to Florida on TL quantities and fifth-morning delivery on LTL traffic. | Roadway, Johnson. Shipper indicates that it takes from 10 to 14 days to transport toys to the involved points. Roadway and Johnson can presently serve shipper by interlining at Birmingham, Ala., or Memphis, Tenn. |
| 31. (7115) Nelco Systems, Springfield, Mo. Blenders | From Springfield to points in Alabama, Tennessee, Georgia, North Carolina, South Carolina and Florida. Thirty truckers a year move to this area with each shipment weighing an average of 700 pounds. | T.I.M.E., Roadway, Jones, Campbell, Air Freight, REA. | Wants faster delivery time to its southern area. Allowing 10 days load time to points in the Southeast. | Roadway and Jones. T.I.M.E. renders single-line service from Springfield to Atlanta. Roadway. |
| 32. (7116) The Harley Company, Kansas City, Mo. Cooling towers | From Kansas City to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee. Five 6 months of 1966 it shipped to Alabama (60,475 pounds), Florida (79,119 pounds) Georgia (80,050 pounds), North Carolina (180,500 pounds), South Carolina (91,321 pounds), and to Tennessee (about 70,000 pounds). Most are LTL shipments. | Watson-Wilson interlining with Ryder, Southbound interlining with Ryder and Central. Mail from Olathe, Kans., to Kansas City, thence over Atlanta gateway to Florida. Roadway interlining with Ryder and Central. | Faster service. Some of trucking shipments is single-line operation. Damage less likely in single-line service. Average transit time is 6 to 7 days. Wants third or fourth morning delivery to the southeast. | Roadway, Johnson. |
| 33. (7118) Mark Transportation Inc., Kansas City, Mo. Common Carrier | Due to a difference in equipment T.I.M.E., Transcon, Gardner, Campbell, Watson-Wilson, Dallas Transit and Roadway cannot interline with Mark. But Mark can interline with Jones. Mark operates generally between Kansas City and points in portions of Colorado, Oklahoma, Nebraska, and Kansas. | | Wants to interline with Jones at Kansas City. | Jones. Primarily a steel hauler. |
| 34. (7119) Carya Inc., St. Louis, Mo. Clothing and shoes | From St. Louis to points in Florida through the Atlanta gateway. Ships 10,000 to 12,000 pounds in LTL lots a week to points in Florida. | T.I.M.E., Gardner, Ryder, MA 1 R. | Present carrier is too slow. Wants second morning delivery from St. Louis to Atlanta. | Jones. Former joint services of Watson-Wilson, Roadway, T.I.M.E. and Campbell. Shipper states that Roadway does not want to handle its traffic. Roadway. |
| 35. (7120) Lee's Bronson, Kansas City, Mo. Wool and synthetic piece goods | From Compton, S. C. to Kansas City. Receives approximately 2,000 pounds a month. Each shipment weighs about 500 pounds. | Watson-Wilson by using Charlotte, N. C. and St. Louis, Mo. gateways. | Wants faster delivery service on inbound movements. Wants third day service to Kansas City. | |
| 36. (7121) Steel Ryder Company, Kansas, Mo. Ryder valve | From Birmingham, Ala. 11 Kansas. Ships about 300,000 pounds an daily. | Shipper indicates that it uses all existing services. | Needs automated job site delivery. Wants 2-day service from Birmingham. | Jones. Need for transportation of the involved commodity only estimated through 1971. Watson-Wilson and Campbell's single-line service from Birmingham. |





Summary of evidence of supporting shippers—Continued

MISSOURI—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 37. (7122) Elder Manufacturing Company, St. Louis, Mo. Piece goods | From points in Alabama, Georgia, North Carolina and South Carolina to shipper's plants at Webb City and Carl Junction, Mo. Receives about 600,000 pounds a year. | Watson interlining with Jones, and Transcontinental with A & R and Jones. | Wants faster service in a two-line Jones and Roadway operation. Average transit time is 5 to 6 days, including weekends. Wants proposed 2-day service from the Atlanta gateway to Webb City and Carl Junction, and 3-day service from Carrollton, Georgia and Alabama to Springfield, Mo., at which point traffic will be interlined to shipper's plants. | Jones and Roadway can presently obtain a two-line Jones-Roadway service over Memphis gateway. It also appears that Roadway can provide a single-line service. The proposed operation of Jones and Roadway would satisfy shipper's long-haul needs with relatively short hauls at either origin or destination. |
| | | NEW HAMPSHIRE | | |
| 1. (88) Hesston Corporation, Hesston, N.H. Paper items | From Hesston to points in Texas, Louisiana and Mississippi. Ships approximately 1.2 million pounds a year to points in above states. | Strickland, Acme, Roadway, Consolidated. | Only has two carriers going to its most important marketing area. It gets the freight of a third carrier because of delays in transportation ship per has suffered losses under penalty clauses. Shipper is not receiving satisfactory service from interline carriers. | Johnson. Roadway has refused to handle interline shipments. Roadway and Strickland have authority to serve most of the destination points requested. Witness could cite only one specific instance of delay. |
| | | NEW JERSEY | | |
| 1. (87) Phariss, N.J. | Has shipper under Georgia heading | | | |
| 2. (170) Ground Grown and Princeton, N.J. | Has shipper under Connecticut heading | | | |
| 3. (88) Deluxe Topper Corporation, Elizabethport, N.J. Tops | From shipper's facilities at Elizabethport and Plainfield, N.J., to El Dorado, Jonesboro, Little Rock, Pine Bluff, and Texarkana, Ark.; Columbia, Greenwood, Hattiesburg, Meridian, Vicksburg, Greenville and Jackson, Miss.; Baytown, Beaumont, Dallas, Fort Worth, Garland, Greenville, Houston, Longview, Orange, Texarkana, Tex.; and Baton Rouge, Monroe and Shreveport, La. Ships about 2 million pounds a year to above points 75 percent of tonnage sent to points in Texas. Ships TL and LTL. Weight range is 500 to 12,000 pounds. Average is about 3,000 pounds. | Watson, Transcon, Johnson, A & C, T.I.M.E., Roadway and Watson-Wilson. | Present service too slow. Wants direct service to Texas. Allow 10 to 14 days load time. Wants fourth-morning delivery on TL and sixth to-seventh morning delivery on LTL to points in Texas and Arkansas. Wants third morning delivery on TL and fifth morning delivery on LTL to Mississippi and Louisiana points. Shipper unable to obtain pickup service from any carrier that offers direct single-line service to points in Texas. T.I.M.E. informed shipper that it would not handle its freight. | Watson, Johnson. Shipper indicates that it takes from 10 to 14 days to transport toys to the involved points. Watson and Johnson can presently serve shipper by interlining at Birmingham, Ala., or Memphis, Tenn. |
| 4. (89) KSM Division, Mark Industries, Inc., Harrison, N.J. Welding equipment | From Harrisburg to points in Louisiana, Texas, and Mississippi. Ships about 150,000 pounds a month to points in the above States. Each LTL shipment weighs about 600 pounds. | Johnson, Roadway, Fillies Universal, T.I.M.E., Red Ball Contract and Gale. | Present transit time is too long. Wants single-line service so as to cut down on transit time. | Johnson. Johnson can serve most points by interlining shipper at Atlanta and a local carrier to Philadelphia and there interline to points involved. Some carriers offer single-line service to some points involved herein. |
| 5. (89) Warner-Chilcott Division of Warner-Lambert, Morris Plains, N.J. Drugs | From Morris Plains, to points in Louisiana, Mississippi, and Texas. Ships 150,000 pounds (LTL) to points in the above States each year. Shipments range from minimum to 21,000 pounds. Average shipment weighs 900 pounds. | Acme, Texas, Strickland Johnson, Roadway, Cole Mason, REA, Feiler, Mitchell, Sea Land, Metro, Wilson, and Roadway. | Wants consistent service and fast transit time because its customers do not keep a large inventory. Wants tracing services. Wants protective service for freezable items during the winter months. | Johnson. Consolidated services (single-line) to Houston and Dallas has not been tried. |
| 6. (819) Monroe International, Inc., Division of Litton Industries, Inc., Orange, N.J. Adding machines | From Orange to points in Louisiana, Mississippi and Texas. During 1966 shipper had in excess of 250 shipments to points in the involved territory. Average weight is 300 pounds. | Roadway, Republic, Cole, Universal, Johnson, Mason, and Morris. | Wants better transit time. | Roadway, Johnson. No specific plea given in writing counsel that Roadway given good single-line service to points in Texas. |
| 7. (921) Continental Copper & Steel Ind., Inc., N.Y., N.Y. Copper and aluminum wire | From shipper's plants located at Hillside and Linden, N.J., to points in Arkansas, Louisiana, and Mississippi. Shipper will ship 80,000 pounds a month to Arkansas, 60,000 to 90,000 pounds to Louisiana, and 60,000 pounds to Mississippi. These would be TL shipments. LTL shipments move to Arkansas (18 to 72 shipments a month), to Louisiana (35 shipments a month), to Mississippi (30 shipments a month), and to Texas (15 shipments a month). Each LTL shipment will weigh from 1,500 to 3,000 pounds. | Strickland, Roadway, and Akers. | Desires single-line service. Transit time on LTL shipments is poor. Having difficulty with Strickland in picking up freight. Wants 3-day service from New Jersey on TL and 5-day service on LTL. Roadway has refused some shipments. | Roadway. Either can render direct service to most points. Many carriers can serve destination territory by interlining at Memphis. This service has not been tried. |

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Summary of evidence of supporting shippers—Continued

NEW YORK—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 6. (933) Bendrom, Dickenson & Co., East Rutherford, N.J. Medical supplies | From East Rutherford, N.J., to points in Texas, Louisiana, and Jackson, Miss. from December 1966 to January 1967 shipper had 41 shipments weighing a total of almost 20,000 pounds. | Various | Wants single-line service. | Johnson, Bowman Shipper has no specific complaints. Roadway & Strickland offer single-line service to Texas destinations. Ryder and Herrin can serve shipper to Louisiana points. |
| 7. (45) A.B. Murray Co., Inc., Elizabeth, N.J. Pipe and tubing | From Elizabeth to points in Arkansas, Louisiana, Mississippi, and Texas. Shipments weigh from a minimum to 71, 0[illegible] Various figures given. | T.I.M.E., Arkansas, Cent, ABC-Rapidways, Wilson, Strickland | Has poor pick up service. Allows 5 to 6 days to destination points. Wants 7-day service to Arkansas, Louisiana and Mississippi. | Bowman, Johnson Various figures given. Shipments vary, more are required. |
| 8. (45) Albuquerque and other points in New Mexico | See shipper under Texas heading. | NEW MEXICO | | |
| 9. (47) New York and Rochester, N.Y. 10. (173) Pearl River, N.Y. 11. (401) [illegible] Candy Co., Brooklyn, N.Y. Candy (Rutherford Candy Co., Charlestown, Mass. Candy (General Mercantile Supply Co., Waltham, Mass. Applesauce (Williams Bait & Bever Co., Ashland, Mass. Baits and scents (Chemetron, Inc., North Eastham, Mass. Fabrics, papers, and boards (Allis Chalmers Corporation, Watertown, Mass. Light fixtures | See shipper under Georgia heading. See shipper under Connecticut heading. From shippers' facilities at Brooklyn, N.Y., Charlestown, Waltham, Ashland, North Eastham, and Watertown, Mass., to Atlanta and from Atlanta to points in the Southeast. All shipments are LTL. No tonnage figures given. | Ohio | Wants faster service. | Strickland. Shipper [illegible] no specific complaints with regard to existing services. |
| 12. (900) Georgetown Manufacturing Company, Division of Fiberboard Corporation, Georgetown, S.C. Fiber pipe and conduit, plastic pipe and cells | From Georgetown, S.C. to points in Texas, Arkansas, [illegible]. Ships about 1,000,000 pounds a year to points in Southeast destinations. Some shipments are TL and others are LTL. | Baker, T & P, Transcontinental, Servais, Strickland, Gilmore, Midwest, Bowman, Red Ball, Roadway, T.I.M.E. | Needs the services of a motor carrier which will interline or provide a single-line service using flat-bed or convertible-van equipment. Allows 10 days load time to points in Texas, Louisiana, and Mississippi, 7 days allowed to Arkansas points. Wants 3-or 4-day service to points in Texas, Arkansas, Louisiana, and Mississippi. | Bowman, Shipper has had some difficulty obtaining proper equipment. Bowman will not interline with flat-bed equipment. Shipper could have an difficulties if Bowman would permit its trailer to continue beyond the interchange point. Shipper needs flat-bed equipment. |
| 13. (50) Statesville Chair Company, Statesville, N.C. Chairs | See shipper under Massachusetts list. | | | |
| 14. (50) Hanover Bros., Inc., Curtis Division, Cornelius, N.C. Foam plastic | From Interstate to points in Louisiana, Mississippi, and Texas in addition to the points listed below. Shipments move almost daily to points in those three States and shipments to Dallas, Tex., move at least two or three times a week. Shipper has between 5 and 12 movements a year to each of 9 specified points in Arkansas with each shipment weighing about 600 pounds, except to Pine Bluff to which it has about 75 shipments a year with an average weight of 900 pounds. To Dallas between 48,000 and 96,000 pounds a year to Kansas City, Kans., and between 36,000 and 75,000 pounds a year to Topeka, Kans. Fifteen thousand pounds is shipped each year to Baton Rouge, La., and 10,000 pounds is shipped to Shreveport, La., annually. Approximately 12,000 pounds is shipped each year to specified Mississippi points, principally Jackson, Vicksburg and Columbus. It has a small amount of shipments to Lorrimo and Springfield, Mo. Approximately 100,000 pounds a year is shipped to Texas with between 50,000 and 60,000 pounds moving annually to Dallas and Fort Worth, Tex. About 75,000 pounds is shipped each year to Houston, Tex., Most of the chairs are coated. | NORTH CAROLINA<br>Hix is used to points throughout the continental territory to Kansas, Central handles the traffic to Chicago shown it in combination. To points in Louisiana, Ryder and Bowman with connecting carriers, except to points served directly by Ryder, to Mississippi Bowman and Ryder with connecting carriers. To Missouri, Central and Red with connecting carriers. To Texas, Ryder, Thornton, Transcontinental, and East Tennessee with connecting carriers. | Shipper desires a direct single-line service to the named destination points to assure the provision of a through service eliminating the problem of certain shipments where interline connections are not available. Also it feels that this type of service would simplify tracing, expedite movements, and enable it to expand the territory it serves. Shipper expects 3- to 4-day service to Arkansas and Kansas; 3- to 5-day service to Louisiana and Mississippi; and 5- or 6-day service to Missouri and Texas. | Bowman, Johnson and Jones. For a period, Ryder could not handle shipper's traffic. |





Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 2. (51) Gillian Furniture Company, Statesville, N.C. Furniture | From Statesville shipper has 1,200 pounds a month to Little Rock, Ark., with minor shipments to other specified Arkansas points, 3,000 pounds a month to Kansas City, Kans., 2,000 pounds a month to Topeka, Kans., 1,[illegible] pounds a month to both Baton Rouge and Monroe, La. 2,000 pounds a month to Shreveport, La., 3,000 pounds a month to Jackson, Miss., 1,000 pounds a month to Meridian, Miss., 1,000 pounds a month to Beaumont, Tex., 6,000 pounds a month to Dallas, Tex., 3,000 pounds a month to Fort Worth, Tex., and 5,000 pounds a month to Houston, Tex. Shipments vary from minimum weights up to 2,000 pounds The furniture is crated. | Acme is used on most shipments to Texas, Mississippi, Missouri, Kansas City, Topeka, Arkansas, and Louisiana. Thurston, interlining at Memphis with delivering carriers also handles Arkansas traffic. Ryder handles some of shipper's Louisiana traffic. Thurston also originates shipments to Louisiana. | Shipper desires second day service to the destination points. The existing service is not satisfactory. Occasionally, Thurston will not be able to interline a shipment and must return it. It has had complaints of slow deliveries with Ryder | Bowman, Johnson and Jones. Roadway does not handle shipper's traffic to points in Texas. Shipper uses Bowman and Johnson and is satisfied with the service rendered It has never used the services of James. Thurston's service is described as satisfactory. Shipper has never routed its Arkansas traffic by Thurston Jones through Memphis, Tenn. Shipper has never used Ryder's service from Statesville to Houston, Beaumont, Baton Rouge, or Jackson. |
| 3. (51) Shaw Manufacturing Company, Charlotte, N.C. Furniture | From Charlotte shipper has movements to specified points in Arkansas, Mississippi, Florida, Kansas, Missouri, Alabama, Louisiana, and Texas. Between [illegible] and 200 shipments move from its plant to unspecified points each day. | Acme, a freight forwarder is used to points in Arkansas Tennessee Carolina interlining with T.I.M.E. at Nashville, Tenn., handles shipper traffic to points in Kansas. Johnson or Thurston handle shipper's Louisiana and Mississippi traffic. The Mississippi traffic is delivered by connecting carriers Acme or T.I.M.E. handle the Missouri traffic. Acme handles the Texas traffic. Baker Pool cars also handle shipper's traffic to Arkansas and Texas. | Shipper indicates that it does not have a single-line service from Charlotte that it can use. The pool car service is not satisfactory because shipments must be accumulated until they are sufficient in number to fill out a railroad car thereby causing delays | Bowman, Johnson and Jones Although Roadway may hold pertinent authority, shipper indicates that it refuses to accept furniture [illegible] single-line service to New Orleans is described as satisfactory. Shipper was not aware that Jones could serve Kansas, Missouri, and Arkansas points on the line service Jones does not propose to serve Charlotte. Ryder's service has been used to points other than those involved but this carrier renders slow pickup service. T.I.M.E. serves many points in Texas on single-line service from Charlotte. Bowman and Johnson. Shipper was not aware of whether Johnson could [illegible] single-line service, some of its shipments to Louisiana. |
| 4. (57) Statesville Chair Company, Statesville, N.C. Chairs | From Statesville in 1965 shipper had LTL movements to Kansas City, Kans. (8,500 pounds), Kansas City, Mo. (10,750 pounds), Topeka, Kans. (2,900 pounds), Baton Rouge, La. (5,300 pounds), Monroe, La. (2,600 pounds), Shreveport, La. (7,900 pounds), Baytown, Tex. (3,300 pounds), Beaumont (2,200 pounds), Dallas (24,900 pounds), Fort Worth (3,200 pounds), Houston (3,100 pounds), Galveston (1,500 pounds), and Pasadena, Tex. (1,500 pounds). Additionally, shipper has movements to named points in Arkansas, Mississippi, and Missouri. | To Kansas, KT & MKC originates the traffic and interlines with Campbell at Memphis, Tenn. To Louisiana, Tallant, a furniture forwarder, is used To points in Texas shipper uses Freight Forwarders and furniture carriers To Mississippi shipper uses Bowman interlining at Memphis Thurston and KT & MKC originate shipper's Missouri, Mississippi, and Arkansas traffic. Johnson is used in single-line service to some Louisiana points | Shipper wants direct single-line service to all of its destination points. It desires 2- or 3-day service to Arkansas and Mississippi, 3- or 4-day service to Kansas, Louisiana, Texas, and Missouri. Freight forwarder service is not satisfactory because of the delays due to the need to accumulate freight. Tallant's service is not satisfactory because it is difficult to get it to make pickups | Bowman, Johnson and Jones. Shipper was not aware of whether Johnson could [illegible] single-line service, some of its shipments to Louisiana. |
| 5. (58) Hanover Bros., Inc., Curtis Division, Cornelius, N.C. Foam plastic | From its Cornelius plant and its Charlotte, N.C. warehouse, shipper moves two shipments a month to both Little Rock and Jonesboro, Ark., with each shipment weighing between 150 and 500 pounds, one shipment a month to Hattiesburg, Jackson, Laurel, and Meridian, Miss., with each shipment weighing between 200 and 400 pounds, and TL shipment a month to Columbus, Miss., transported in customer's vehicles, one shipment every 2 weeks to Kansas City, Mo., weighing between 800 and 2,000 pounds, one shipment a month to Baton Rouge, Shreveport, and Monroe, La., with each shipment weighing between 2000 and 4000 pounds, two shipments to both Dallas and Houston, Tex., with each shipment weighing between 600 and 1,000 pounds | Dixie, Herrin, and Johnson originate its traffic to the Arkansas points Dixie originates the traffic and interlines at either Atlanta or Savannah. Dixie and Johnson originate shipper's Mississippi traffic. Roadway and Herrin handle shipper's Missouri traffic. Herrin must interline the traffic Johnson and Dixie handle shipper's Louisiana traffic Dixie originates shipper's Texas traffic. | Shipper wants single-line service. Ryder does not make regular pickups at shipper's plant. Roadway interstate is not rendering a satisfactory pickup service. Shipper does not feel that joint-line service is satisfactory because of the problem of tracing and 1 day transit time is lost for every interline. Shipper has a competitor in Texas | Bowman, Johnson, and Jones. Ryder holds single-line authority from the two North Carolina points to points in Mississippi and Louisiana, and Roadway can handle shipper's Kansas City traffic in single-line service Ryder and Roadway serve Texas points in single-line service. Jones is not seeking authority From Cornelius or Charlotte It would interline with either Bowman or Johnson if its application is granted However Bowman and Jones can presently provide this service but shipper is not utilizing this routing |

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Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 6. (40) Bayco Corporation, Dayton, Ohio. Rubber and plastic products outbound and fabrics, cords and yarn inbound | Outbound from shipper's Weaverville, N C., plant and its Asheville, N C., warehouse traffic moves to specified representative points in Arkansas, Louisiana, Mississippi, Missouri, and Texas. Shipments to these points aggregate approximately 7,500 pounds daily. Outbound from shipper's Springfield, Mo., plant traffic moves to specified representative destinations in Florida, Georgia, and North and South Carolina. Shipments to these points aggregate about 3,000 pounds daily. Inbound to the Springfield plant shipments move from specified representative points in Georgia and South Carolina. To the Weaverville plant shipments move from Baton Rouge and Lake Charles, La. Inbound shipments to Springfield aggregate approximately 300,000 pounds monthly and move in box car, TL and LTL service. To Weaverville inbound shipments aggregate between 40,000 and 50,000 pounds monthly and move in TOFC, TL and LTL. | Roadway handles shipper's traffic in single-line service from Asheville to Dallas and Houston, Tex. One of two named carriers originates traffic at Weaverville and interlines with Roadway at Asheville. ET & WNC serves Baytown-Pelly daily from its Asheville terminal. It handles shipper's Arkansas and Southwest traffic. ET & WNC originates shipper's Louisiana traffic and interlines with Morris at Memphis. Also Atlanta-Asheville originates this traffic and interlines with Johnson at Orlando. ET & WNC originates the Mississippi traffic and interlines with Campbell. Also, Atlanta-Asheville interlining with Johnson handles this traffic to Texas. Blue Ridge originates Weaverville shipments and interlines with Roadway at Asheville. Also, ET & WNC originates the traffic and interlines it at Memphis with either Jacksonville or East Texas Atlanta Asheville also originates this traffic and interlines at Atlanta with Transcon. Inbound to Weaverville from Baton Rouge and Lake Charles shipper is using Morris to Memphis and ET & WNC to Weaverville, Ryder to Atlanta, T.C.T. to Asheville; Blue Ridge and Ryder to Asheville and CSPE to Weaverville between Weaverville and Springfield shipper uses ET & WNC interlining at Memphis with Eastern Gillette. From Springfield to Florida shipper uses Campbell interlining with Ryder at Birmingham, and T.I.M.E. with Conrail at Atlanta. To Georgia, T.I.M.E. to Atlanta and connecting carriers beyond. Roadway is used on shipments to Georgia and North Carolina. To South Carolina from Springfield Roadway Gillette interlines at Memphis with Thornton. | Shipper wants 2- or 3-day service on LTL shipments and 2-day service on TL from Weaverville to points in Arkansas from Weaverville and Asheville to Louisiana points, shipper wants 2- or 3-day service on LTL and 2-day service on LTL. To Mississippi from Weaverville and Asheville shipper wants 2- or 3-day service. To Texas points shipper wants 3-day service from Weaverville and Asheville. Shipper introduced an exhibit dealing with inbound shipments to Springfield and with shipments from Springfield to Weaverville. During the first 4 months of 1960, 89 (only a portion of the total inbound shipments to Springfield) shipments moved from consolidated southeastern States weighing from 15 to 20,945 pounds requiring transit times between 3 and 14 days. Between 12/27/65 and 4/25/66, 32 (about 90 percent of the total traffic) shipments weighing between 711 pounds and 24,000 pounds requiring between 5 and 10 days transit time moved from Springfield to Weaverville. Shipper wants 2- or 3-day service on inbound shipments from Louisiana to Weaverville. In interplant movement between Springfield and Weaverville, shipper wants 2- or 3-day service. Roadway's service outbound from Springfield is described as inconsistent. If the Bowman and Johnson applications are granted shipper will divert traffic from its present warehouse to Springfield. Eventually, it hopes to close its Atlanta warehouse and ship from Springfield. This move would increase transit time to many points but it would allow shipper to be better able to supply its customers with the items they request. | Bowman, Johnson and Jones. Bowman serves shipper at Weaverville and Asheville. Johnson's services are west of Asheville. Shipper indicates that there is no single-line service from Weaver ... Approval of the applications would not affect motor carrier service from Springfield to Mississippi, Louisiana, Alabama, and Georgia, Texas |
| 7. (76) Stuyvesant and Old Fort, N.C. | See shipper under Massachusetts heading. | | | |
| 8. (108) Thayer Coggin Institutional, Inc. and Annex, Inc., High Point, N.C. Furniture | From High Point to points in Texas such as Dallas, Houston, El Paso, Corpus Christi, Lubbock and San Antonio. During a 13-month period it shipped 239,000 pounds into Texas of which 46,000 pounds moved to Dallas. The shipments are both TL and LTL. Shipments also have movements to Shreveport and Baton Rouge, La. During a 3-month period ending 3/30/60, 10 shipments weighing a total of 17,000 pounds moved to Dallas; 44 shipments weighing 10,000 pounds to Houston; 10 shipments weighing 12,400 pounds to Fort Worth; 2 or 3 shipments weighing 1,000 pounds to Shreveport; and 4 shipments weighing 700 pounds to Baton Rouge. About 90 percent of shippers' traffic to Texas moves by post rail car. | Shippers use ten Southern consolidators, Daily and Security Warehouse. Also Acme, a freight forwarder, is used and Transcon, a furniture carrier is used. ET&WNC was used but its connecting carrier refused to accept furniture shipments. Old Dominion handles shippers' traffic from High Point to Charlotte for loading by Acme | Shippers allow for 10- or 12-day service to the named destination points. Roadway and Ryder hold single-line service between the involved points but Roadway will not transport cut-up furnishers and Ryder's pickup service is described as poor. Shippers express a need for Johnson's proposed second-morning service to Dallas. | Johnson and Bowman. Johnson holds authority to serve High Point but it is not being used as an originating carrier. Shippers are supporting Bowman as an interline haulm to Texas. They would use Dallas from High Point and the shipments would be interchanged with Bowman at an unspecified point. |





Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 9. (111) Southern Dressstuff Company Division of Martin Marietta Corporation, Salisbury, N.C. Dressstuffs in drums and in bulk | From Salisbury during 1961 shipper moved 178,900 pounds (314 drums) to McKinney, Tex., 51,920 pounds (56 drums) to Waco, Tex., and 87,400 pounds (160 drums) to New Braunfels, Tex. | Roadway interlines at Dallas on shipments to the three Texas points. Acme single and joint line services have been utilized. Ryder handles shipper's traffic from Charlotte, which is about 42 miles from Salisbury. | Shipper indicates that its commodity is subject to freezing at temperatures below 32 degrees Fahrenheit. Roadway has not assured shipper that its shipments will be protected from the cold. Johnson has assured shipper that it would provide a protective service to the points of interchange, namely Dallas or Houston, Tex. | Bowman and Johnson. Shipper is reasonably satisfied with the protective service rendered by Akers. It has not had any complaints that its product froze on shipments handled by Roadway during the winter months without protective service. |
| 10. (66) General Electric Company, Hickory, N.C. Transformers | From Hickory to Dallas (1,753,000 pounds in first 8 months of 1960) and Houston, Tex. (2.1 million pounds). Average weight of each shipment is 28,000 pounds | ET&WNC, Morris, Thurston, Red Ball, Southern, Roadway. | Wants faster deliveries and single-line service to Texas points. | Johnson and Bowman. Shipper has not tried existing interline service at Memphis, Morris used the service of Bowman to Texas points. When Roadway has equipment available, it renders good service. |
| 11. (28) Jiffy Transportation, Gastonia, N.C. Oil filters, air filter cartridges, and air cleaners | From Gastonia to points in Mississippi, Louisiana, and Texas. Approximately 15 million pounds move annually | Robinson, Texas Carolina, Ryder, Red Ball, Campbell, Ringo, Dixie, Akers, Viking, Gordons, Delta, Campbell, Freeman, Phillips, Ship Express, Thornton, Southern 0 R | Need faster, more consistent service. Average transit time about 7 days excluding weekend. Wants third-morning service to all points | Johnson, Bowman, and Roadway. |
| 12. (46) Wrying and Miller, D. Greensboro, N.C. Fabricating machines | From Greensboro to points in Texas. Shipments range between 50 and 35,000 pounds TL and LTL shipments | Akers, N. C., East Texas, Thornton, Roadway, C & H Trans., Bell Trans., Morris, Emery, Standard, Republic | Needs faster service. Wants second-morning service on TL shipments, and between 3- and 4-day service on LTL shipments. | Bowman and Johnson. |
| 13. (108) Humble Oil and Refining, Houston, Tex. Petroleum products | From shipper's Charlotte, N.C., plant to points in Arkansas and Louisiana, and from shipper's plants at Baton Rouge, La., and Baytown, Tex., to points in North and South Carolina, Georgia and Florida. To Arkansas and Louisiana about 80 shipments totaling 9,036 pounds moved between January and July 1960. From Baton Rouge shipper expects to ship between 20,000 pounds and 40,736 pounds for any given 7-month period to the involved destination States. From Baytown 40 shipments totaling 244,241 pounds moved between 1/1/60 and 8/7/60 to the involved destination States | Tennessee-Carolina, Roadway, Bowman, Johnson, Red Ball, Seaton, South western, Eastern Gillette, Garrison, Mercury, Sale, Jones, Red Line, Powell-Allen, Viking, Pichowlish, Ryder, Morris, Tomahoc, Overnite, Dixie Highway, Merchants, Smith, Waters, East Texas, Carolina Northern | From Baton Rouge and Baytown shipper wants third-or fourth-day service to Florida, into Georgia, North and South Carolina shipper wants second-day service from Baton Rouge and second- or third-day service from Baytown. Shipper generally states that it is not altogether satisfied with service to Arkansas and Louisiana. Average transit time from Baton Rouge is 3 days to Florida, 4 days to South Carolina, and 7 days to Georgia including weekends. From Baytown to Florida, it is 5 days, to North Carolina 6 days, to South Carolina 11 days (Average transit time not given to Arkansas and Louisiana.) | Bowman, Johnson, and Roadway |
| 14. (57a) Mail points of shipper | See shipper under Georgia heading | | | |
| 15. (61B) Southern Pipers, Inc., Charlotte, N.C. Piping Rags | From Charlotte, to points in Mississippi, Arkansas, Texas, Louisiana, and Kansas Monthly ... and 30,000 pounds | Bowman, Ryder, ET & WNC, Rail | Needs faster service. Wants second day service to points in Mississippi, and Louisiana, and third-morning to Texas points | Bowman and Johnson |
| 16. (63J) Lenoir, N.C. | See shipper under South Carolina heading | | | |
| 17. (66B) R. T. Grant Company, New York, N. Y. General commodities | From shipper's consolidated center at Charlotte, N. C., and from points in North and South Carolina, Georgia, Virginia, Maryland and Tennessee, to points in Arkansas, Kansas, Louisiana, Mississippi, Missouri and Texas. About 1,600 pounds moves a month from Charlotte to each of the destination States involved, and about 450,000 pounds moves annually from Charlotte to Texas points alone. From the Carolinas collectively about 2,500 pounds moves to Texas monthly. From Georgia, about 5,000 pounds moves to Texas monthly from Virginia, about 2,000 pounds moves to Texas monthly. From Maryland and Tennessee, collectively, about 1,500 pounds moves to Texas monthly. About 1,000 pounds a month from above origins collectively and about 1,500 pounds from Charlotte a month moves to the other destination States collectively. | Bowman, Johnson, Dan Dixie, Georgia Highway, A.C.M.E., Lone Star, ETWNC, Southwestern, Strickland, East Texas, Gillette | Wants second-morning service from Charlotte to involved destination States and faster transit time from and to other involved points. Average transit time to Texas points is 7 days, including weekends. From Charlotte, and 5 to 6 days to Arkansas points from Charlotte, including weekends (Average transit time from and to other points not given.) | Bowman and Johnson. Transit study includes all shipments during period surveyed. |

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Summary of evidence of supporting shippers—Continued

NORTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 19. (658) [illegible] Corp., Charlotte, N. C. ...leaning compounds. | From Charlotte to points in Alabama, Mississippi, Louisiana, and Texas. Weekly shipments range between ...000 and 3,000 pounds. | Bowman interlining with unnamed connecting carriers | Prefers single-line service. Wants 3-day service. Presently allowing a week lead time. | Bowman and Johnson. |
| 20. (667) Display Fixtures Co., Charlotte, N.C. Fixtures for display of merchandise | From Charlotte to points in Texas. Monthly shipments range between 11,000 and 12,000 pounds | Johnson, Thurston, East Texas, Bowman, Ryder, ETSWC, Ahern, Red Ball, Strickland, Southern, Roadway. | Prefers single-line service. Wants between 2- and 3-day service | Bowman and Johnson. Specific complaint made against Roadway. |
| 21. (668) North Carolina Display Fixtures, [illegible], Ohio Fixtures for retail stores and greeting cards | From shipper's plant at Forest [illegible], N.C., to points in Mississippi, Louisiana, and Texas. Shipments range between 17 and 1,700 pounds. | F & W, Consolidated, West, East Texas, Johnson, Thurston, Aiken, Central, Nelson, Hunter, DPT, Dunton, McPeak, Red Ball, Strickland, Campbell, Co., Mercury, [illegible] Co., Ryder, Bowman, Dixie, T.I.M.E. | [illegible]-line service inadequate. Presently allowing 7-days lead time | Bowman and Johnson. Shipper states that Roadway is authorized to serve the origin and destination point but will not accept LTL shipments. No other specific complaint. |
| 24. (705) Rayon Fibre Supply Manufacturing Company, Gastonia, N. C. Straw wreath forms | From Gastonia to points in Mississippi, Texas, Arkansas, and Louisiana. Over a 9-month period it shipped about 50 LT. on pounds to the above points. Average weight of each was 400 pounds | Wants faster pick-up service and faster transit time. | Bowman and Johnson. No indication that existing service is inadequate. | |
| 27. (851) Textiles, Inc., Thrasada, Inc., Gastonia, N.C. Thread and yarn. | From Gastonia to Dallas, Waco, El Paso, San Antonio, and Del Rio, Tex., Kansas City, Mo., and Meridian and Tupelo, Miss. Made in excess of 100 shipments to the above points during November 1960. Weight range from minimum to over 5,000 pounds. Average 1,000 pounds. This is only 50 percent of traffic moving to above areas. | Thurston, Bowman, Roadway, ETSWC, Carolina, STWF, Strickland, Bekins, T.I.M.E., Central, West, Campbell, Akers, Denton | Wants single-line service because it is more dependable. Allows lead time of 4 to 5 days to Mississippi and Louisiana points and 8 to 9 days to Texas points. Wants 3 to 4-day service to Texas points. | Johnson and Bowman. Akers offers joint-line service to many points in Louisiana and Texas |
| 28. (863) Maple Products, Inc., Bassett, N. J. Ironing board pads | From shipper's Huntersville and Cornelius, N. C. plants to points in Texas. Made 86 shipments to various points in Texas during August 1960. Average weight was 250 pounds. | Johnson, Republic, Fredericksen, STWF, Valley, Red Ball, Central, Strickland. | Feels transit time can be improved. Wants more equipment. Wants 2-day service to Dallas and Houston, Tex | Bowman and Johnson. Bowman and Johnson can presently serve shipper in joint-line service over the Memphis, Tenn., gateway. Shipper did not make any specific complaints. |
| 29. (938) F. Lorillard Co., Inc., New York, N. Y. Tobacco items | From shipper's Greensboro, N.C., and Louisville, Ky., plants to Shreveport and New Orleans, La., Little Rock, Ark., Kansas City, Mo., and Houston and Dallas, Tex. For a 9-month period in 1960 shipper moved in excess of 3 million pounds to the involved territory. | Keeser & Dixon, ITSWCO, Bowman, Johnson, Roadway, Youngblood | Wants single-line service. Wants 2-day service to involved points. Needs to end pilferage problem. | Bowman, Johnson and Roadway. Shipper states that service at present is satisfactory but that it would prefer single-line service to avoid claims and pilferage. Johnson, Bowman. |
| 30. (939) Huntingdon Electric Corporation, Raleigh, N.C. Electric motors | From Raleigh to points in Texas, Louisiana, and Mississippi. From 6/1/60 to 7/30/60 shipper had in excess of 125 shipments to points in the above territory. Average weight about 800 pounds. | Thurston, R.C. Waters, Dixie, C.F.A., Norris, ETSWC, Couch, Strickland, Nelson, DPT, T.I.M.E. | Wants better transit time. | |
| 1. (927) Oklahoma City and Tulsa, Okla. | See shipper under Texas heading. | OKLAHOMA | | |
| 2. (952) Oklahoma City, Tulsa, and others located in Oklahoma | See shipper under Texas heading. | | | |
| 3. (961) Spiro, Heiger, and Quarrville, Oklahoma | See shipper under Arkansas heading. | | | |
| 4. (976) Jones, Inc., Oklahoma City, Oklahoma Automotive parts | From Oklahoma City to Atlanta, Ga., commercial zone (about twice a week, totalling 3,000 to 5,000 pounds). From Atlanta to Oklahoma City (250 to 500 pounds shipments about twice a month). From Oklahoma City to Texarkana (3 or 4 times a month each shipment weighs 70 to 300 pounds), El Dorado (same as Texarkana) and Magnolia, Ark. (ships once a month, each shipment weighing 200 to 300 pounds). Also, occasionally ships to Birmingham, Ala. | T.I.M.E., Tramcore, MEA. | Wants a faster single-line service. Average transit time 5 days including weekends. Wants second-day service to Atlanta and Birmingham | Jones. T.I.M.E. and Tramcore offer single-line service to Atlanta but shipper states that their transit time is too slow. |

114 M.C.C.





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 5. (Tex.) [illegible] Co., Houston, Texas. [illegible] rubber, [illegible] weather-str... | [illegible] ...ston, Tex., [illegible] pounds a week from Gadsden, Ala., bound from Texas to E. Lincoln and Voorhees, N.J., shipper moves 100 to 150 pounds about three times a month | [illegible] and 27 are used inbound and 497 outbound | Wants direct service from Gadsden. Wants overnight service from Birmingham to Texas and second-morning service to E. Lincoln and Voorhees, N.J., from Texas | |
| 6. (Tex.) [illegible] Another for Company, [illegible], Ohio. Receives trims and refrigerators and ships [illegible] Cutler-Hamm... Texas, Ohio. Fiberglass tops and fittings | From points in southeastern States to Texas [illegible] at points weighing 500 to [illegible] pounds and 15 times a month | [illegible] service, present... [illegible] Lanes | Wants direct service from Gadsden. Wants overnight service from Birmingham to Texas and second-morning service to E. Lincoln and Voorhees, N.J., from Texas | [illegible] ...ton Supplying ...ton from Atlanta [illegible] |
| 7. (753) Petroleum, Inc., Oklahoma City, Okla. Aluminum structures | From Oklahoma City to points in Alabama and Georgia. Ships 175 lots in excess of 25,000 pounds a month. Expected to ship 15,000 to 20,000 pounds a month in 1961 | Tramcore, T.I.M.E., Jones. | Needs fast delivery to customer. Wants to use Jones through T.I.M.E. has single-line authority. It still interlines. Wants 2-day service to Birmingham and Atlanta. Can get from Tulsa to Atlanta in four days now. | Jones. Shipper supports Jones as it can have single-line service to Atlanta and Birmingham but it already has such service available. Jones. Jones could not serve Dalton directly if authority was granted. It would interline at Atlanta. |
| 8. (755) [illegible] Transportation], Texas, Okla. Pipeline equipment | From Tulsa to the gateways of Atlanta, Ga., and Birmingham, Ala. Ships 1,000 pounds a month to Atlanta and Birmingham as gateways. Expected a ten percent increase in business in 1961. | T.I.M.E., Tramcore. | Wants faster transit time. Wants proposed 2-day service into Atlanta and 3-day service to Birmingham and to points on U. S. Highway 82, in Arkansas | Jones. Shipper supports Jones as it can have single-line service to Atlanta and Birmingham but it already has such service available. Jones. Jones could not serve Dalton directly if authority was granted. It would interline at Atlanta. |
| 10. (794) Quigley Carpet Co., Tulsa, Okla. Receives bales of carpets. | From Dalton, Ga., to Tulsa. Receives 10,000 to 15,000 pounds a month | Tramcore, T.I.M.E., Roadway, Johnson, Georgia Highway Express to Atlanta | Wants faster service because of customer demands and loss of sales due to slow delivery. Wants proposed 2-day service from Atlanta. | Jones. T.I.M.E. and Tramcore offer single-line service from Atlanta to Tulsa (only receiving point). Several carriers have single-line service available. Jones. Presumed service is still joint-line. From some points Jones can [illegible] joint-line service presently. |
| 11. (797) [illegible] America-wide United, Inc., Tulsa, Okla. Building materials | From the gateways of Birmingham, Ala., and Atlanta, Ga., to points in Oklahoma and Arkansas. Receives about 4,000 pounds a month from the gateway of Atlanta and 1,000 pounds a month from the gateway of Birmingham. | ETSWC, Western, Tramcore, Jones | Present service too slow and too much damage. Wants 2-day service from Atlanta to Tulsa and 3-day service from Birmingham. | |
| 12. (798) [illegible] Furniture Company, Washington, Ohio. Carpets and furniture | From the area of Atlanta, Ga. and Birmingham, Ala. (as gateways) to Washington. Receiving about 150 shipments a year. No weight figures given | RBA, Frisco, Santa Fe, Western, Buckot, Jones, T.I.M.E., [illegible], Georgia Highway, Roadway, R & P Motor, Admor, Transway, T. & P., Thurston, West, Tramcore, Mercury, Dixie Ohio, Fulton Transit and B.T.M.E. | Needs a carrier with single-line service to give faster deliveries. Average transit time four to seven days including weekends. | |
| 13. (799) Hart's Oldest Grocery Company, Washington, Ohio. Receives miscellaneous products | From Birmingham, Ala., to Washington. Receives about two LTL shipments a month weighing about 600 pounds. | ETSWC to Jones or Dalton, Tex. Gardeen to Memphis, Tenn. to Jones. | Needs single-line service to better transit time and to lessen damage to product. Keeps a small inventory. Average request time on three tiers of loading was 5.3 days to Washington. Wants 7-day service to Washington. | Jones. |
| 14. (800) Gideon Products Company, Oklahoma City, Okla. Receives clothing and shoes | From Georgia, Alabama and North Carolina to Oklahoma City. Receives over 100,000 pounds LTL and 175,000 pounds TL from the above States in a year. | Tramcore, T.I.M.E., Jones (interlining with ETSWC. | Existing service too slow in transit. Needs rapid trucking. Has had some claim trouble with Ryder. Average transit time about 5 days, including weekends. Wants single-line service to cut 1 day off of transit time. | Jones. T.I.M.E. and Tramcore offer single-line service to Atlanta |
| 15. (779) Universal Distributors, Tulsa, Okla. Receives carpet | From Calhoun, Ga. to Tulsa. Receives one shipment every 2 weeks weighing between 350 and 600 pounds. | T.I.M.E., Tramcore, Jones, and Bowman. | Wants faster service out of Calhoun on an to compete with service from Dalton. Under Jones' proposal, shipper would get two to three day service. Currently receiving two to three day service. Also wants second-morning service from Atlanta. | Jones. Jones and Bowman offer joint-line service out of Calhoun now. |
| 16. (772) Fashion Floors, Inc., Tulsa, Okla. Receives carpet rolls | From Dalton, Ga. to Tulsa. Receives eight to ten rolls a month from Georgia. [illegible] 400 pounds. | T.I.M.E., Tramcore, MEA, Georgia Highway. | Shipper claims to have excessive delays with present serv... Under Jones' proposed 1-day service from Atlanta. | Jones. T.I.M.E. and Tramcore offer [illegible] service from Atlanta. Jones interlining with Bowman can offer a joint-line service from Atlanta. |

114 M.C.C.

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Summary of evidence of supporting shippers—Continued

ATLANTA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 17. (763) Tulsa Pipe Supply, Tulsa, Okla. Carports and plastic sheet covers | From Dalton and Columbus, Ga. to Tulsa. Receives small LTL shipments once or twice a week. | T.I.M.E., Transcon, Jones | Wants second-day delivery from Atlanta | Jones, T.I.M.E. and Transcon offer single-line service from Atlanta. Shipper has found their services to be slow. Texas Interlining with Bouton can perform the proposed service. Shipper has not had any complaints about existing service to Jones. |
| 18. (765) Alabama Fisher Products, Tulsa, Okla. Receives airplane [illegible] | From Birmingham, Ala., Norman and Nashville, Ga. to Tulsa. Receives 15,000 to 20,000 pounds a month, mostly from Birmingham | T.I.M.E., Transcon, Campbell, ETSW | Wants second-morning service to [illegible] of Atlanta and Birmingham | Jones, Transcon and [illegible] Birmingham. Two-line service to Arkansas from Memphis |
| 19. (766) Robertson Fertilizer Mf, Inc., Oklahoma City, Okla. Outbound: dry fertilizer. Inbound: glass containers | From Oklahoma City to points in Alabama and Georgia and the Carolinas. From Atlanta, Ga., to Oklahoma City. Ships about 3,000 pounds a month to Atlanta and 100,000 pounds to the Carolinas. | T.I.M.E., Transcon, Jones, Thurston, Gillette, Helms, Dixie, CT&WC, Buckaloo, S&H, Overnite, Holman, Dixie, Ryder. | Present service is slow. Wants two-day service from Atlanta to Oklahoma. Shipper's transit time study shows that the average elapsed time in the listed shipments from Atlanta to Oklahoma City is 4.4 days and from the Carolinas it is 7.0 days. | Jones, T.I.M.E. and Transcon offer single-line service to Atlanta. |
| 20. (768) Simco Sewing Company, Muskogee, Okla. Receives cement, iron and ornamental components. | From Birmingham, Ala. to Muskogee. Receives one shipment a month weighing from 150 to 500 pounds. | Transcon, Cole, Jones | Needs better service. Too much delay causes loss of customers. Present service takes one week to two days, wants faster delivertes. Wants second-morning service from Birmingham and Atlanta. | Jones. Jones proposes second-morning [illegible] complaints regarding existing service. |
| 21. (769) Hart Parkhurst and Company, Tulsa, Okla. Receives tubing, pipe and [illegible] | From Birmingham, Ala. and Atlanta, Ga. to Tulsa. Receives 100 to 150 shipments a month from Atlanta. Average weight 150 pounds. Receives six shipments a month from Birmingham. Average weight 5,000 to 10,000 pounds. | Transcon, T.I.M.E., Gardner, Jones, Campbell | Wants quicker delivertes. Wants second-morning delivery out of Atlanta and Birmingham to Tulsa. | Jones, Transcon and T.I.M.E. offer single-line service from Atlanta. Campbell offers single-line service out of Birmingham. |
| 22. (815) Stilwell Canning Company, Stilwell, Okla. Canned and frozen foods | From shipper's facilities at Stilwell and Van Buren, Ark. to southern points through Atlanta, Ga. and Birmingham, Ala. gateways. Almost 350,000 pounds shipped in 1965 to Atlanta and Birmingham | Jones and refrigerated equipment | Wants single-line service for frozen foods. Wants 2-day service between Birmingham and Atlanta on the one hand, and Stilwell, Okla., Van Buren, Fort Smith, Ark., on the other. | Jones. Requires refrigerated equipment. |
| 23. (834) Regency Furniture Company, Muskogee, Okla. Receives furniture | From Atlanta, Ga. and points in Virginia, North and South Carolina to Muskogee (using Atlanta and Birmingham as gateways). Receives about 35,000 pounds a year from Atlanta, Ga. Receives daily shipments of about 500 pounds from other points. | T.I.M.E., Transcon, Mercer, Yellow | Wants single-line service to cut damages and speed up deliveries. Average transit time 5 days including weekends. Wants 2-day service from Atlanta and Birmingham which would enable it to have three or four day delivery from the Carolinas. | Jones. Jones is authorized to serve Muskogee directly from Memphis gateway. |
| 24. (836) B & B Equipment Company, Tulsa, Okla. Outbound: power mowers and misc. household items and used [illegible] | From Whitesburg, Ga. to Tulsa. (Atlanta gateway). Receives two shipments a year, each weighing about 200 pounds. From Atlanta, Ga. to Tulsa, one to four shipments a month each weighing about 40 pounds (only for 6 months a year). From Tulsa, Okla. to points in Arkansas. (No volume figures presented.) | T.I.M.E., Transcon, Jones. | Needs faster transit time because it cannot afford to inventory its parts. Wants second-morning service out of Atlanta and second-morning service from Texas to points in Ark. | Jones. Shipper has never used Jones with an interlining carrier to points in Arkansas. T.I.M.E. and Transcon offer single-line service from Atlanta. |
| 25. (837) Harding Glass Company, Fayetteville, Ark. and Tulsa, Okla. Receives window and table, and glass doors. | From Atlanta and Norman, Ga. (Atlanta gateway) to shipper's stores at Tulsa and Fayetteville. From Atlanta receives one shipment every two weeks at each destination. Average weight 500 to 600 pounds. From Norman receives one shipment every three weeks at each destination. Average weight is 700 to 800 pounds. | T.I.M.E., Jones | Present service is slow. Wants second-morning service from Atlanta to Tulsa and Fayetteville. | Jones. T.I.M.E. offers single-line service from Atlanta. |





Summary of evidence of supporting shippers—Continued

ATLANTA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 26. (837) [illegible] Co. [illegible] City, Okla. Department store items | From points in Alabama, Georgia, North Carolina, and South Carolina, to points in Arkansas, Mississippi, New Mexico, Oklahoma, and Texas. Company receives at its warehouse in Oklahoma City between 500 and 1,500 pounds weekly from Atlanta, Ga., and about 50,000 pounds annually from other Georgia points. It receives between 4,000 and 5,000 pounds a year at its Oklahoma City warehouse from Birmingham, Ala. and about 12,000 pounds annually from other Alabama points. It receives about 100,000 pounds collectively from the Carolinas at its warehouse. Shipments over 500 pounds generally move directly to the stores in other destination towns. Receives several shipments weekly from points in the origin states. | Baker, Powell, Atlas, Alabama Central, T.I.M.E., Southeastern, Northeast, Gordons, Woodley, Calvert, Bee Gee, Red Arrow, Overnite, Transcon, Riley, CT&WC, Brownell, East Texas, Tamiami, S&H, Georgia Highway, Lorentz, Mercury, Jones, Davis, Cherokee, Hall, Thurston, Western, Watson, Wilson, Yellow Transit | Too many time stops and unpaid [illegible]. Average transit time 3 days including weekends, except 2.0 days from Atlanta to Oklahoma City, overnight service from Atlanta to points in Mississippi, and second-day service from Atlanta and Birmingham. | Strickland and Jones. In opposite from the carriers that present service is adequate. Present delivery time averages about 3.0 days |
| 27. (871) Muskogee [illegible] Muskogee, Okla. Foundrifts | From Atlanta, Ga. to Muskogee. Receives about 200 to 1,000 pounds LTL monthly | Gillette, Jones, Watson | Wants 2-day service from Atlanta. Average time from Atlanta to Memphis is 1.7 days, average time to Muskogee was about 5 days, including weekends. Wants 2-day service from Atlanta to Muskogee. | Jones. Witness admitted present service is adequate |
| 28. (845) Ozark Bureaus [illegible] Muskogee, Okla. Automotive products | From Tallapoosa to points in the southeast through gateways of Atlanta, Ga. and Birmingham, Ala. Two-third of the traffic is TL with the remainder being LTL. From 4,000 to 5,000 shipper had 15 shipments to the southeast moving through [illegible]. During 1965 shipper moved about [illegible] pounds to eight destinations. Shipper also receives inbound about 10,000 pounds LTL lots of certain grocery products from the Carolinas and Alabama | Jones, Ryder, Overnite, Thurston, Cloer, Hall, Helms, Carolina, Bowman | Too much damage to points in [illegible] area. Nutritional products need special handling. Wants 2-day service to Atlanta and Birmingham. Both traffic handled via Memphis gateway. Shipper receives 5 4-day service to the Carolinas, 6-day service (including weekends) to Tennessee, Ala., and 7-day service (including weekends) to Florida. | Jones. |
| 29. (846) Dunn Wrecking Cost Company, Oklahoma City, Okla. Asbestos board and frames | From Oklahoma City, Okla. to Atlanta, Ga and Birmingham, Ala. Receives orders from Memphis, Tn. through Atlanta, averaging about 1 shipment a week (600 to 700 pounds). About eight shipments a month moving to Atlanta. Each shipment weighing about 1,500 pounds. | Transcon, Jones, Pike, T.I.M.E., Frank | Wants single-line service from Atlanta for expedited delivertes. Shipper has had difficulty in tracing shipments. Average transit time 5.5 days including weekends. Wants 2-day service from Atlanta. | Jones. Witness not an owner of Jones Interlining at Memphis, Tenn. Jones offers 2-day delivery form Memphis which is not same as its proposed service from Atlanta. |
| 30. (848) Mitchell's, Inc., Oklahoma City, Okla. Receives clothing | From Atlanta, Ga. or a gateway to Oklahoma City. Receives in excess of 2,500 pounds a month, from Georgia and North and South Carolina. | Dixmouth, Gillette, Bowman, Transcon, Woodley, Pilot, Barnes, T.I.M.E., ITT, Overnite, Johnson | Shipper wants quicker service. Wants 2-day service from Atlanta to Oklahoma City. Presently shipper receives 3.5 day service including weekends from Atlanta to Oklahoma City. Roadway has handled shipper's traffic from the Carolinas to Oklahoma City in 3.0 days (including weekends). | Jones. Jones offers 2-day service to Oklahoma City from Memphis. |
| 31. (850) Grove Industries, Inc., Tulsa, Okla. Receives glass goods | From Atlanta, Ga (gateway) to Tulsa. LTL shipments three to five a month weighing 300 to 800 pounds | Roadway, Transcon, Strickland, Chart | Wants more consistent service. Wants second-day service out of Birmingham and Atlanta. | Jones. Shipper claims that existing service is unreasonably poor. Shipper generally does not control routing. Shipper is unaware of several single-line carriers which offer service from the Carolinas. |
| 32. (856) Wanta County Company, The, Oklahoma City, Okla. Goods | From Oklahoma City to Birmingham, Ala., Atlanta, Ga., points in Arkansas Highway 67, and points in Texas. During a 1-year period it shipped $111,000 worth of goods to Georgia and $94,000 worth of goods to Alabama. Expects to ship 1,000 pounds a week to Texas. | Transcon, Jones | Needs faster transit service. Wants second-day service from Oklahoma City to Leighton, Greenville, Paris, Texas and other points in Arkansas. | Jones. Transit time is important because goods ready to perishable. Only 35 percent of business requires refrigerated equipment, but each order will contain some of the items that do require refrigeration. |

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Summary of evidence of supporting shippers—Continued

PENNSYLVANIA

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 1. (67b) Phillips Van Heusen Corp., Pottsville, Pa. Clothing and toiletries | From shipper's distribution centers at Chattanooga, Tenn., and Pottsville, Pa., to points in Arkansas, Mississippi, Missouri, Tennessee, Louisiana, Texas. About 22 million pounds were available. | Merchants, Campbell, (TG&BC, Duncan, Gardner, Evans, Acme, T.I.M.E., Jones, Interstate, Lone Star, Red Ball, East Texas, Hunt. | Joint-line service inadequate. Wants overnight service to Arkansas, and second-morning to other points. Presently allowing between 4 and 7 days road time. | Duncan, Johnson. |
| 2. (67c) Pennsylvania Dutch Company, Mt. Gretna, Pa. Candy and food items. | Inbound, from Dallas (1,000 pounds a month) and Fayetteville, Tex. (7,000 pounds a month) to Mt. Gretna Terminal. Outbound, from Mt. Gretna Terminal to Dallas and Houston, Tex., Baton Rouge and Shreveport, La., and Jackson, Miss. Ships about 5,000 pounds a month to above points. Each shipment ranges from 200 to 2,000 pounds. | Johnson, Roadway, Mason-Dixon. | Present service is too slow. Allows 7 days road time to Dallas and Houston and 14 to 21 days to outlying Texas points. | Johnson. Johnson can interline at New Orleans with several carriers who can deliver to the involved points. Johnson's proposed inbound service would be a [illegible] |
| 3. (67h) Medical Laboratories, Inc., Ft. Washington, Pa. Sugar, starch, plastic, and glass bottles | Outbound, 17 ships from Ft. Washington to points in Texas, Mississippi, and Louisiana. During November 1966, shipped about 17,600 pounds (17L) to points in the above States. | Keare, Johnson, T.I.M.E., CTW, Strickland, Transamerican, Consolidated, UPS. | Wants faster direct service. Eliminate tracing problems. | Duncan, Johnson. Shipper generally states that service to Jackson, Baton Rouge, points in Louisiana, Mississippi, and Texas directly from Ft. Washington. |
| 4. (67i) Keyes Motor Freight Lines, Lewistown, Pa. Motor common carrier | Wants to interchange Texas, Louisiana, and Mississippi traffic with Johnson at Harrisburg, Pa. | Interstates with Keyes at Harrisburg and Philadelphia, also, with Roadway. | Wants to interchange on traffic moving to and from points south. | Duncan, Johnson. |
| 5. (67j) Allis Chalmers Corporation, Pittsburgh, Pa. Electrical transformers | From Pittsburgh and Gadsden, Ala., to points in Arkansas, Louisiana, Mississippi, Missouri, Texas, and Kansas. During 1966, it shipped 270 shipments from Pittsburgh consisting of 11,600 units, and a total weight of almost 5 million pounds. Shipped 321 shipments from Gadsden consisting of 2,000 units, and a total weight of 1.7 million pounds. | B & O Express, Gateway, Duncan, Roadway, Superior, West, Campbell, Dexter, Gardner, Mercury, Eastern, CTW. | Too much damage in transit. Wants faster transit time. Wants overnight service from Gadsden to Memphis gateway with next morning service to Mississippi, second-morning service to Louisiana and Arkansas, and second or third-day service to Texas, Kansas, and Missouri. Interchange time in transit not given for specific points, and no transit figures are given for Pittsburgh. | Duncan, Duncan only proposes to serve Gadsden. Superior can serve most of the points involved. There are a large number of irregular-route truck haulers who can handle the involved commodities. Shipper also supported Roadway. Shipper has complaints to it the services of several regular route carriers. Shipper could not point out specific complaints. Open to equipment is required. |
| 6. (67k) Russell Mitchell Industries, Inc., Philadelphia, Pa. Cores | From Philadelphia to points in Texas, Louisiana, Mississippi, and Arkansas for a 3-month period in 1966 shipper transported 13 LTL shipments to Texas and 7 to Mississippi. Average weight 352 pounds. | Freight forwarders. | Shipper wants consistent pick-ups and faster deliveries than it is currently getting from freight forwarders. Wants 5-day service to Mississippi, Louisiana, and Arkansas. | Duncan, Johnson. Shipper has no specific complaints except excessive transit time and there is no evidence submitted to document poor transit time. Duncan and Johnson can serve shipper by interlining at Memphis and Mobile. Consolidated offers single-line service to Texas points. Johnson. Consolidated has single-line service to Houston and Dallas. Also Transamerican, Mason and Dixon can serve many points involved, directly. It appears that many carriers including Johnson can serve the involved territory directly. Shipper set forth no examples of delayed shipments. Johnson. |
| 7. (68a) Cargoline Sales, Inc., Kearney, N. J. Nail and floor coverings | From shipper's Kearney Bank, Pa., plant to points in Louisiana, Mississippi, and Texas. Shipper serves about 10,000 to 15,000 pounds a day to the destination territory. Weight range is from 200 to 6,000 pounds (LTL). | Copeland, Strickland, Roadway, Johnson, Harris, Transcon, Mason. | Wants faster transit time. | |
| 8. (68b) Gulf Oxhorde & Tube, Inc., Div. of Phillips Electronics, Inc., Bridgeville (York), Pa. Electron ceramics. | From shipper's York, Pa., plant to points in Mississippi, Louisiana, and Texas. Ships about 75,000 pounds LTL to points in Mississippi, 150,000 pounds a year to points in Louisiana, and ships 1.1 million pounds to points in Texas. Receives about 1.8 million pounds a year from the involved territory. Shipments range from 200 - 800 pounds LTL. | Tims, Acme, Dallas, Eagle, Kearney, Interstate, Consolidated, Quaker, Harris. | Wants the services of a carrier who will leave trailers at its facilities and pick up the trailer when it is loaded. Wants single-line service. Shipper has had difficulty in obtaining pickup service from Roadway. | |
| 9. (68c) Metromatic Corporation, Textile Machinery Corporation, York, Pa. Department store goods | From York, Pa., to points in Mississippi, Louisiana, and Texas. Also from points in Pennsylvania, Connecticut, New Jersey, New York, North Carolina, South Carolina, Pennsylvania, Rhode Island and Virginia to shipper's stores in the above-named destination States. From September 1966 through November 1966 shipper transported in excess of 250 shipments weighing from 100 to 2,000 pounds average. All LTL to points in the involved territory. | Duncan, Johnson, T.I.M.E., Lancer, Universal, Cole, CTW, Alkhemian, Gardner, Transcon, Spicer, Strickland, Republic, Cumberland, Quaker, Spartan, PIE, West, Carroll, Sun Beam, Carolina Cigar, ABX. | Wants more consistent transit time. Shipper's transit time study indicates that on shipments to its stores at Jackson, Mississippi, from Georgia, Massachusetts, New York, New Jersey, North Carolina, Pennsylvania, South Carolina it received generally 6-day service. To the Texas stores from Georgia, North and South Carolina and the middle Atlantic States it received, on the average, between 7.5 and 12.2-day service. And, to its Louisiana stores it received, on the average, between 6 and 10.5-day service. | Duncan, Johnson. Shipper has the services of a number of carriers available to it plus a large fleet of private equipment. |





Summary of evidence of supporting shippers—Continued

RHODE ISLAND

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 1. (66b) Hyperformance Company, Woonsocket, R.I. Plastic tanks and fittings. | From Woonsocket, R.I., to points in Texas [illegible] | Acme, Universal, Johnson, East Texas, Lone Star, [illegible] | Shipper has been using a freight forwarder since [illegible] to obtain direct service to [illegible] Wants single-line service. | [illegible] Johnson. Consolidated or single-line service to several [illegible] Johnson. Johnson interlining with East Texas at Atlanta offers single-line service. |
| 2. (67a) Arnold Co., a Division of Textron, Inc., Providence, R.I. Wire and wire products. | From Providence, R.I., to points in Texas, Mississippi, and Texas. Ships between 50,000 and 75,000 pounds LTL a month to points in the destination States. Average weight of each shipment is 800 [illegible] | Roadway, Johnson, [illegible], Taylor, Consolidated, T and, and Evans. | Wants single-line faster service. | Duncan, Roadway. Shipper's [illegible] specific complaints about existing service. It has not shown reasons for points where they have single-line service. Shipper has not used the services of a few carriers who can [illegible] shipment points in a [illegible] |
| 3. (67d) Fairfax Laminated Wire Company, Lincoln, R.I. Wire and wire products, chipper, lead, and alumi[illegible] | From [illegible] Texas, Louisiana, and Mississippi during 1966 shipper transported about [illegible] Missouri pounds (LTL) to points in Louisiana, 630,000 pounds to points in Mississippi, and 620,000 pounds to points in Texas. The shipper also transmits handling [illegible] | Tuesday, Johnson, Harris, Taylor, No name, Universal, Spector, East Texas, and Hall. | Wants single-line service. Roadway could not provide pickup service at times. | Duncan, Johnson. Shipper has two single-line carriers to do [illegible] which it is supporting Johnson. |
| 4. (67k) Barnes and Company, R.I. | | | | |

SOUTH CAROLINA

| | | | | |
|---|---|---|---|---|
| 1. (63) Bowling Williams, Inc., Spartanburg, S.C. Outboard-tumbler and tumbler products. Inbound raw materials. | Inbound during 1965, shipments of raw materials came from points in Texas, Mississippi, and Louisiana to shipper's 29 plants located at numerous points in South Carolina. Approximately 75,000 pounds is shipped inbound each month with the average shipment weighing 2,500 pounds. Outbound shipments from the commodities points via, Greenville or Spartanburg, S.C., to specified points in Texas and Louisiana collectively weigh 250,000 pounds a month. Of this amount approximately 150,000 pounds moves to Dallas, Tex.; approximately 50,000 pounds moves to Houston, Tex.; and approximately 50,000 pounds moves to Fort Worth, Tex. Shipper also has 125,000 pounds of outbound shipments to specified points in Mississippi each month. Ninety percent of the movements are LTL between 10,000 and 100,000 pounds a month moves to points in Arkansas. Approximately 50,000 pounds moves each month to Kansas City and, shipper has traffic moving to points to Oklahoma. Shipper routes between 75 and 80 percent of its outbound shipments. | Roadway is used to points in Texas. Dunbar is used to points in Mississippi and Texas and Baton Rouge, La. Tuscola handles shipments towards City traffic. Acme, Watson - Wilson handles to Kansas City traffic in single-line service. Johnson is used to New Orleans. | Shipper's product is susceptible to considerable damage if handled unnecessarily. It indicates that it must consolidate its freight from its various points of warehouses in Greenville and Spartanburg and then deliver these shipments to the Roadway's dock. Limited shipper dock space also is a reason for consolidation. Shipper has experienced problems in receiving service to off-route points in Texas, particularly with Roadway. Shipper prefers single-line service from Greenville. It receives two or three consolidate a month supporting Roadway's request time to Dallas. | Report & Bowling, Johnson, Duncan, and Jones. Shipper serves its traffic from the South Carolina plants to the two consolidating points in the equipment of a carrier to west. It is satisfied with Dunbar's service to points in Texas and Mississippi. Shipper indicated that the service it receives to Kansas City and points in between is generally satisfactory. Roadway had a three-line haul restriction to points in Texas, and Dunbar still and wants some of the points in Mississippi on a three-line haul. In this regard it is noted that sometimes the carrier shipper uses is a participating carrier from LT the Texas application is granted, it would have to interline to serve points in Arkansas. Shipper indicated that it had no real complaint on Johnson traffic. Watson-Wilson's service to Kansas City is described as satisfactory. Shipper feels that there are several carriers operating from Greenville to Atlanta, and that a number of carriers operate from Atlanta to Dallas. Even if the applications are granted shipper will continue to use the carrier it uses to point of shipment at its 29 plants and deliver that to carriers at Greenville. |
| 2. (64) Kennon Ridge Division of Kennon Manufacturing Company, Hartsville, S.C. Blankets and [illegible] | From Hartsville to points throughout the United States shipper has 10 million pounds of traffic a year. Almost all of this traffic is LTL. During 1965 shipper had about 10,000 shipments averaging about 150 pounds each, and about 500 shipments 1L averaging about 10,000 pounds each. Shipper reports the traffic to specified points in Arkansas, Alabama, Florida, Kansas (Kansas City, and Topeka), Missouri, Alabama, Louisiana, and Texas. During August 1965, it had 58 shipments weighing 6,200 pounds to eight specified points in Arkansas, [illegible] 39 shipments weighing 5,155 pounds to Kansas City and Topeka, Kans.; 29 shipments weighing 3,695 pounds to 8 points in Louisiana, including 6 to Baton Rouge; 32 shipments weighing 3,400 pounds to 9 points in Mississippi; 40 shipments weighing 5,455 to Carthage, Kansas City and Springfield, Mo.; and 90 shipments weighing 10,340 pounds to 15 points in Texas. | Southeastern and Johnson originate traffic at shipper's point and interline with other carriers at Atlanta. | Dunbar will not pickup shipper's traffic at Hartsville. Shipper wants single-line service from Hartsville to the points to which it ships. | [illegible] Johnson, Duncan, and Floyd & Bowling. Shipper states that it has no direct, single-line service available from Hartsville to [illegible] and Texas points that Floyd & Bowling proposes to serve. It indicates that most all carriers have difficulty in originating traffic at the plant and transport it to Atlanta. Shipper believes that only two carriers, viz., Duncan and East Texas could actually free evidence to Dallas. Shipper considers that to the points to which it ships it has single-line service from Atlanta. |

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Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 3. (27) Duncan Motor Lines | This general commodity motor common carrier interlines with other carriers at Greenville, S.C. Under its certificate of registration it serves approximately 200 South Carolina shippers which have traffic moving to specified points in Arkansas, to Kansas City and Topeka, Kans., and to specified points in Louisiana, Mississippi, Missouri, and Texas. During 1963 it intercepted 8,770 pounds moving to points in Arkansas; 2,070 pounds moving to Kansas; 18,980 pounds to Louisiana; 38,340 pounds to Mississippi; 1,810 pounds to Missouri; and 31,065 pounds to Texas. Duncan routes approximately 50 percent of the freight it originates. | On shipments to the Southeast Region interlines with A.T.&S.F.R.R., Thornton, and Bowman. It has a concurrence with Roadway and also interlines with Johnson. | Duncan wants two-line service made available to its customers. Two-line service would also increase Duncan's revenue because it would not have to be divided among three carriers. Roadway does not accept certain types of freight from Duncan at Greenville | Bowman, Johnson, and Jones. Duncan was not able to negotiate a concurrence with Ryder Motor Lines, which has a terminal in Greenville. Holds single-line authority between a number of points in South Carolina, Texas, Louisiana and Mississippi. Duncan holds authority between Greenville and Memphis, Tenn. Johnson, which has a terminal in Greenville, can serve all of the points in South Carolina that Duncan serves. Duncan and Johnson by interlining with other carriers could render two-line service to all the destination points Duncan named. If the Johnson and Duncan applications were granted they could offer South Carolina shippers single-line service to the destination points Duncan names. Duncan believes that its customers would still prefer that it originate their traffic and interline with these carriers. Roadway holds single-line service between Greenville, on the one hand, and on the other, Kansas City and Topeka. Service to Little Rock, Ark. was described as satisfactory |
| 4. (28) Department Division of Research Company, New York, N.Y. Synthetic fiber, synthetic staple fiber, synthetic fiber yarn, plastic cotton, chemicals, nylon batts, medicines, and finished and unfinished fabrics. | (1) From Blackburg and East Greenwood, S.C. to Anadarko, Okla. 2.5 million pounds moves annually. (2) From Blackburg and East Greenwood to Gainesville, Tex. 100,000 pounds moves annually. (3) From Pensacola, Fla. to Greenville, Miss. 2.5 million pounds moves each year. (4) From Blackburg, East Greenwood and Decatur, Ala. to Clayton 75,000 pounds moves annually. (5) From Blackburg, East Greenwood and Decatur to Gainesville and Bowman to Leonia, Tex. 2 million pounds moves each year. (6) From Gladstone, Greenwood, and Decatur to Terrell, Tex. 25,000 pounds moves annually. (A) From Pensacola, Fla. and Blackburg and Greenwood to Gainesville and Rogers, Ark. 30,000 pounds moves annually. (B) From Pensacola, Blackburg and Greenwood to Coleman, Okla., 60,000 pounds will move annually. (C) From Pensacola, Blackburg, and Greenwood to Enid, Okla., 30,000 pounds moves each year. (D) From Pensacola, Blackburg and Greenwood to Bolling Field, Okla., 30,000 pounds moves annually. | (1) One Unit to Atlanta, Ga., Transfer to Oklahoma City, Okla. and Line Haul to destination. (2) Service to Birmingham, Ala. Delivery to destination. (3) Service to Memphis and Denton to destination. (4) Service from the two South Carolina points to Birmingham and Delivery to destination. Support from Decatur to Birmingham, Delivery to destination and Bowman's to destination. (5) From the two South Carolina points Service to Birmingham, Delivery to Denton and Bowman's to destination. (6) From the two South Carolina points Service to Birmingham, Delivery to Denton and Bowman's to Dallas and Henderson Plant, in destination. From Decatur Support to Birmingham, Delivery to Dallas, and Henderson Plant to destination. (A) Service from Pensacola to Memphis and Bowman to Denton. (B) Service from Pensacola to Memphis and Bowman to Dallas, the Trans from the two South Carolina points to Atlanta and Denton to Oklahoma City. (C) Service from Pensacola to Birmingham and Denton to Enid. (D) Service from Pensacola to Birmingham and Denton to Dallas. | (1) Shipper wants 1-day two-line service, via, Johnson to Denton to Dallas, Tex. and Bowman from Dallas to destination. Although Roadway holds single-line authority from Blackburg and East Greenwood and from Decatur, Ala. it indicated to Carrier that it performed out to handle shipper's outbound traffic. (2) Shipper wants three-line haul reduced to two-line, viz, Johnson or Bowman to Memphis and Bowman to destination and it wants 4-day service. (3) Shipper wants 1-day single-line service from Kansas. (4) Shipper wants 3-day direct single-line service of Bowman or Johnson from South Carolina points and Bowman from Denton. (5) Shipper wants 4-day two-line service of Johnson or Bowman from South Carolina to Denton and Bowman to destination. It wants because Zone Routing to Bowman and Bowman's to destination. (6) Shipper wants 4-day two-line haul of Bowman or Johnson to Dallas and Bowman to destination. (A) Shipper wants Bowman to handle this traffic to Springfield, Mo. where a connecting carrier will interline. It feels that this way the originating carrier can control the traffic for all but 107 miles of the movement. (B) [illegible] wants Bowman to handle this traffic and interline it at Ottawa, Ohio. It believes that since Bowman would handle the traffic for all but 39 miles of the movement it would receive prompt delivery. (C) Shipper wants Johnson or Bowman to originate this traffic and interline at Jackson, Miss. with a connecting carrier. Originating carrier would handle traffic for all but 45 miles of the movement and influence the prompt delivery by the connecting carrier. (D) Shipper wants Bowman to transport the traffic to Greenville, Miss. for interline. Johnson would also originate the South Carolina traffic and interline at Jackson. | Bowman, Johnson, and Jones. Ryder has single-line service from participant origins to Denton but does not wish to handle shipper's traffic. Dentex has authority to serve shipper's Decatur plant on specified commodities to points in Louisiana and Mississippi but their service is within movements described as satisfactory. ETSWC provides single-line service between Blackburg and East Greenwood, on the one hand, and, on the other, Greenville, Miss. Campbell requested that shipper not cut it as interline at Birmingham and it has filed tariff exception. Bowman does not seek authority to serve Ottawa, Ohio with respect to part (B) |
| 5. (29) Sacro-Iowell Shops Division of Harvard Corporation, Conley, S.C., Cotton-textile machinery. Inbound-rubber washers | Cotton-mill shipper has movements from Conley to south points as Brenham, Hearne, Sherman, New Braunfels, Laredo and Brownsville, Tex. Inbound shipments move from Meridian, Miss. to Conley. About 10,000 pounds moves inbound annually in LTL service approximately once every 2 weeks. Approximately 150,000 pounds will move in the future. Outbound shipments are generally TL lots weighing between 15,000 and 35,000 pounds each. Some of shipper's traffic moves through Laredo to points in Mexico | Motorcoal Thornton interlining with Missouri Pacific Truck Lines to points also. Ryder and ETSWC have been used. | Shipper wants 3- or 4-day service to the Texas points | Bowman and Johnson. Shipper has not had any trouble with respect to the existing carriers. Although Roadway solicited shipper's traffic it has never used this carrier's services. |
| 6. (30) Lancaster Mills, Inc., Lancaster, S.C. | MC65 holds authority to transport general commodities, with exceptions, (1) between points in Darlington County, S.C. and between points in this County and points in South Carolina, and (2) between points in Florence County, S.C. and between points in Florence County and points in South Carolina, as consolidated by an exhibit, the traffic which MC65 originated for one of its shippers moved to specified points in Texas and Arkansas in carrots 23 miles located at 7 points in South Carolina. This traffic accounts for 75 percent of its business. | Interline with Bowman and ETSWC at Brownsville, S.C. | Its interline with Bowman has been satisfactory. On the other hand its interline with ETSWC has not been satisfactory. Ryder refuses to come for interline. Roadway canceled its interline connections. Floyd S. Beasley has refused to concur on interline. This carrier does not agree with the general opinion of shippers that single-line service is preferable to joint-line service | Bowman and Johnson. Bowman can serve the points in South Carolina this carrier serves to stop-in-line service but it interlines with B.C.&G. Johnson's as Floyd S Beasley, Bowman and Johnson Roadway has refused to accept shipper's [illegible] originated by another carrier. Shipper indicated that Ryder, Bowman, and C&P hold authority to serve Conway. It has used Ryder's service and is satisfied with this carrier. However, it has not used Akers service to the Southeast while shipper has single-line service available to a number of the destination points [illegible] service |





Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| [illegible] | | Prior Pensacola to [illegible] Ryder and Leaguer to Rocky Mount, New [illegible] or Overnight Motor Line for South Carolina points to Atlanta and other points in East [illegible] | | |
| 7. (31) Cotton Southern Mills, Lancaster, S.C. Yarn, thread, and finishing | Inbound shipper has 17 movements in December of this traffic. The remainder originated by Hunter Mills which interlines with East Texas at Atlanta. Shipper believes that it could deliver on an interline basis to points in Kansas and Missouri. Ryder is used to Arkansas and Mississippi points. | Ryder and P.I.E. Ryder has been used in 12 percent of this traffic. The remainder originated by Hunter Mills which interlines with East Texas at Atlanta. Shipper believes that it could deliver on an interline basis to points in Kansas and Missouri. Ryder is used to Arkansas and Mississippi. Shipper also uses permit [illegible] | Shipper wants expedited morning service to the Louisiana points and third-morning service to the Texas, Kansas, Missouri and Arkansas points. Inadequacy of service is important because shipper's customers rely on delivery within a certain time. Shipper has received complaints with respect to Ryder's service and has complained that the Rockmoor and Lugoff [illegible] service. It would prefer to use a short-line carrier, but from Lancaster to Greenville, S.C. for interline with longline carriers is due to avoid congestion at its loading docks | Floyd S Beasley, Bowman and Johnson. Roadway has refused to accept shipper's traffic originated by another carrier. Shipper indicated that Ryder, Bowman, and C&P hold authority to serve Conway. It has used Ryder's service and is satisfied with this carrier. However, it has not used Akers service to the Southeast while shipper has single-line service available to a number of the destination points [illegible] service |
| 8. (32) [illegible] Lancaster, S.C. 9. (33) Jeffrey Manufacturing Co., Delta, S.C. Steel and conveyors | One shipper under Massachusetts heading | | | |
| | Inbound shipper receives steel from Burlington, Ala., Pittsburg, Pa., Sparrows Point, Md., Ohio, and Chicago, Ill. Both in and each month shipper has movements to El Dorado and Little Rock, Ark. Two to three shipments to Arkansas points weighing a total of between 2,000 and 3,000 pounds; Kansas City and Topeka, Kans. two or two shipments a month weighing a total of 1,000 pounds; Baton Rouge and Lake Charles, La. two or three shipments weighing a total of between 2,000 and [illegible] Abbeville, Jackson, Meridian, Pascagoula, and Hattiesburg, Miss. two or three shipments weighing between 2,000 and 3,000 pounds; Kansas City, Mo.; Beaumont, Dallas, Fort Worth, and Port Arthur, Tex. 12? or 20 shipments weighing a total of between 25,000 and 50,000 pounds. The average shipment weighs approximately 1,800 pounds. | Bowman and Johnson are used on inbound and outbound movements to Arkansas and Louisiana. Bowman or Ryder is used to Louisiana. Bowman or Ryder is used to Mississippi. Ryder is single-line service or overnight interlining with Transcon is used to Houston. Roadway is used to Dallas. Overnight interlining with Transcon is used to Fort Worth. Roadway or Ryder is used to Houston and to Fort Arthur. | Shipper wants 1-day service to Arkansas, Kansas, Missouri, and Texas. Two- or 3-day service is requested to Louisiana and Mississippi. Roadway is not authorized to pickup at shipper's plant. This carrier has a restriction to two-line hauls in the involved area. Ryder renders a daily pickup service to shipper but it was unable to load two shipments in two separate days and had to return the following day and make the pickup. Shipper prefers single-line service. | Bowman and Johnson. Shipper has used the services of Bowman and Johnson and describes them as satisfactory. It indicates that the routing to Kansas City and Topeka is satisfactory and that Johnson's service to Louisiana is satisfactory |
| 9. (34) Sacro-Iowell Shops Division of Harvard Corporation, Conley, S.C., Cotton-textile machinery. Inbound-rubber washers | Outbound shipper has movements from Conley to south points as Brenham, Hearne, Sherman, New Braunfels, Laredo and Brownsville, Tex. Inbound shipments move from Meridian, Miss. to Conley. About 10,000 pounds moves inbound annually in LTL service approximately once every 2 weeks. Approximately 150,000 pounds will move in the future. Outbound shipments are generally TL lots weighing between 15,000 and 35,000 pounds each. Some of shipper's traffic moves through Laredo to points in Mexico | Motorcoal Thornton interlining with Missouri Pacific Truck Lines to points also. Ryder and ETSWC have been used. | Shipper wants 3- or 4-day service to the Texas points | Bowman and Johnson. Shipper has not had any trouble with respect to the existing carriers. Although Roadway solicited shipper's traffic it has never used this carrier's services. |
| 10. (35) B.C. Lisse, Inc., Hartsville, S.C. | MC65 holds authority to transport general commodities, with exceptions, (1) between points in Darlington County, S.C. and between points in this County and points in South Carolina, and (2) between points in Florence County, S.C. and between points in Florence County and points in South Carolina, as consolidated by an exhibit, the traffic which MC65 originated for one of its shippers moved to specified points in Texas and Arkansas in carrots 23 miles located at 7 points in South Carolina. This traffic accounts for 75 percent of its business. | Interline with Bowman and ETSWC at Brownsville, S.C. | Its interline with Bowman has been satisfactory. On the other hand its interline with ETSWC has not been satisfactory. Ryder refuses to come for interline. Roadway canceled its interline connections. Floyd S. Beasley has refused to concur on interline. This carrier does not agree with the general opinion of shippers that single-line service is preferable to joint-line service. | Bowman and Johnson. Bowman can serve the points in South Carolina this carrier serves to stop-in-line service but it interlines with B.C.&G. Johnson's as Floyd S Beasley, Bowman and Johnson Roadway has refused to accept shipper's traffic originated by another carrier. Shipper indicated that Ryder, Bowman, and C&P hold authority to serve Conway. It has used Ryder's service and is satisfied with this carrier. However, it has not used Akers service to the Southeast while shipper has single-line service available to a number of the destination points [illegible] service |

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Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 10. (86) Du Bellamy Underwear Company, Rawlds, S.C. Girls underwear and sleepwear | From Rawlds to Dallas, Fort Worth and Houston, Tex. the shipments, which are LTL and weigh an average of 825 pounds, move about twice a week to each of these. | Thurston originates the traffic and interlines it at Memphis, Tenn. | Shipper wants 4-day service or better to these Texas points. The single-line services of Roadway and Ryder are not used to the named Texas points because shipper was not satisfied with the service rendered by these carriers. The interline service rendered by Thurston since the beginning of 1966 is described as unsatisfactory. | Herrin and Johnson. Shipper uses the services of Johnson and describes this service as reliable. It has not used Roadway's service. Shipper has not tried Johnson to New Orleans and interlining there with connecting carriers to Texas because it does "not feel that it was fair [Thurston's service]...for a short period of time." |
| 11. (178) Stanton Mills, Stanton, S.C. Towels, dishcloths, table covers, napkins, and wash cloths | From Stanton to Dallas, Houston, and Fort Worth, Tex. Shipments vary from LTL to TL, between 20,000 and 30,000 pounds across each month to Houston, with the average shipments weighing between 1,000 and 5,000 pounds. About 9,000 pounds move monthly to Dallas. | Roadway is single-line service and preferred to interline service. | Shipper has received complaints regarding the transit times of Roadway and Ryder. Transit time is important to shipper. It allows 7 days for delivery to Dallas and Houston. Second or third delivery is preferred. Shipper wants single-line service because it seems to limit the amount of handling of the expensive and easily damaged cartons in which it ships its commodities. | Herrin and Johnson. Shipper has used Herrin's and Johnson's service and has found them to be satisfactory. |
| 12. (187) Intercontinental Paper Company, Mobile, Ala. Cardboard - paper, paper articles, and used pulp. Industrial - machinery, parts thereof, resins, chicken, and pulled vegetable and supplies. | From its Georgetown, S.C. plant shipper moved, in 1965, a total of 530,000 pounds to Jackson, Miss., Shreveport, Bastrop and Springhill, La., and Dallas, Fort Worth, and Houston, Tex. (2) From its Mobile, Ala. plant in 1965 shipper moved 1.5 million pounds to points in Texas including Houston, (301,000 pounds) Fort Worth, (150,000 pounds), Beaumont (109,450 pounds), Dallas (130,000), and 69,000 pounds to Baton Rouge, La. (3) From its New Orleans, La., plant during this same period it shipped 875,450 pounds to Houston, 100,000 pounds to Dallas and 100,000 pounds to Fort Worth (4) From its Bastrop plant it shipped a total of 0.7 million pounds to Atlanta, Ga.; Huntington, W.Va.; Baltimore, Md.; Philadelphia, Pa.; New York, N.Y.; Boston, Mass.; and assorted California points. (5) In 1965 from its Springhill plant it shipped a total of 0.7 million pounds to Atlanta, Ga.; Huntington, W.Va.; Baltimore, Md.; Philadelphia, Pa.; New York, N.Y.; Boston, Mass.; and assorted California points. (6) In 1965 from its Camden, Ark. plant it shipped 30,000 pounds to Gadsden, Ala., 30,000 pounds to East Pepperell, Mass., 40,000 pounds to Burlington, N.C.; 100,000 pounds to Camden, N.J.; 80,000 pounds to Hannover, Ala.; 100,000 pounds to Everett, Mass.; 170,000 pounds to Bayonne, N.J.; 80,000 pounds to Lodi, N.J.; 40,000 pounds to Greenville, S.C.; 30,000 pounds to Warren Bank, Pa.; and 30,000 pounds to Charleston, S.C. (7) Also, from Camden it shipped 70 tons to Greenville, S.C.; 60 tons to Gloucester-Salem, N.J.; 15 tons to Philadelphia, Pa.; and 10 tons to Bangor, Maine and (8) From its Pine Bluff plant in 1965 it shipped 17 tons to Augusta, Ga.; 40 tons to Mobile, Ala.; 20 tons to Bangor, Me.; 197 tons to Philadelphia; 100 tons to Atlanta, Ga.; 30 tons to Raleigh, N.C.; 12 tons to Covington, Va.; 20 tons to Charleston, S.C.; and 20 tons to Spartanburg, S.C. This traffic moved in TL and LTL shipments. | Johnson and Thurston have a trailer pool at Georgetown. Shipper used this also from Mobile. Where is used from Georgetown. From Mobile to Texas, Shreveport, Bastrop, and Houston and Beaumont are used. Hunt has a trailer pool at Mobile. From Baton Rouge shipper uses Johnson, Hunt, Red Ball, Oklahoma, and Bowman to Dallas, Fort Worth, Houston, and Beaumont in point- and single-line service. From Bastrop Red Ball is used. Except for the Camden plants, Red Ball serves all shipper's plants to Arkansas, Mississippi, and Louisiana. From Camden ATA, Southeastern, Herrin and Allen are used. From Pine Bluff ATA, Superior, Southwestern and Red Ball are used. From Pine Bluff, Ark. | Herrin and Johnson will pickup shipments after 6:00 p.m. Herrin and Johnson promise to establish terminals at Monroe, La. and shipper will have to have a connecting carrier (shipper named Red Ball) originate the shipment at Bastrop and interline it at Monroe. Similarly a connecting carrier again shipper named Red Ball will have to serve Springhill interlining with Herrin and Johnson at Shreveport. Red Ball serves all of shipper's involved points direct except the one located at Camden. Shipper indicates that it receives reasonably satisfactory service from Red Ball. Shipper can foresee that presently named could interline with Red Ball at Memphis, Tenn. in traffic to and from Bastrop or Springhill. |





Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
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| 13. (216) Texize Chemicals, Inc., Greenville, S.C. Cleaning and buffing compounds, waxes, detergents, and sizing compounds | From Greenville during the first 2 weeks in May shipper had LTL and TL movements to Dallas (58,046 pounds), Fort Worth (1.0 pounds), Houston (25,465 pounds), Beaumont (1,482 pounds), and San Antonio, Tex. (38,101 pounds). It also ships to other points in Texas such as El Paso, Palestine, Garland, Irving, and Waco. Shipper anticipates a 20 percent annual increase in sales. Shipper's commodities must be kept from freezing. About 90 percent of the above described tonnage to Dallas was handled in private carriage. Common carriers are used on LTL and overflow TL traffic. | TOPC, private carriage, Ryder, Thurston, and Johnson. Ryder renders single-line service from Greenville to Dallas, Houston, Fort Worth, and Beaumont. Johnson is used to originate Greenville traffic. | Shipper wants tonnage to third earning service on both LTL and TL traffic from Greenville to Dallas, Fort Worth, Houston, and Beaumont. It indicates that Roadway will not accept its traffic after the first frost since it is marked "Keep From Freezing". Shipper has received complaints on the interline service of Johnson and Thurston to Texas. | Herrin and Johnson. Shipments to San Antonio, El Paso, Palestine, and Waco would be interlined by applicants. Akers' service has been reasonably satisfactory. |
| 14. (219) A. Lowenstein and Sons, Inc., New York, N.Y. | Ships cotton from points throughout South east to Anderson, S.C. Ships gray cloth from Anderson, to Archbell and Lyman, S.C. Ships finished cloth from Archbell and Lyman to points in Louisiana, Mississippi, and Texas. Ships fiberglass from Valdese, to points in Louisiana, Mississippi, and Texas | Shipper operates the Gilpatrick Trucking Company which is authorized to operate in S.C. [illegible] outside [illegible] are interlined with Ryder, Roadway, and Johnson | Business expansion desires the 2-day service proposed by Johnson | Johnson |
| 15. (331) The Kendall Company, Bethune, S.C. Surgical dressings and related products, textiles | From Bethune shipments move to numerous specified points in Texas | Shipper's primary origin carriers are Thurston Motor Lines, Overnight Transportation, and Standard. Connecting carriers are Transcon Central, Merchants, Fast Texas, Gardner, Herrin, T.I.M.E., Roadway, and Ryder. Private carriage. Shipments to some Texas points convert to save on three- and four-line hauls. | Desires single-line service, particularly to Dallas, to order to avoid delays on shipments to Georgetown storage. Transit study shows one shipment to Dallas handled by Overnight-Transcon took 15 days. Most shipments take 3 to 5 days. Delivery to Houston, Texas points takes 7 to 13 days. | Herrin and Johnson |
| 16. (424) Tampax Sweater and Sportswear Co., Cleveland, Ohio Wearing apparel | From shipper's plant at Chester, S.C. to points in Texas. Monthly shipments range between 30 and 2,891 pounds | Johnson, Roadway, Lone Star, Thurston, Fast Texas, RBA, Southeastern, National, Standard, Ryder, Delta, Transcon, Gardner, and Viking Freedom | Prefers single-line service. Delay in pickups | Herrin, Johnson. Except for Roadway no specific complaints. |
| 17. (462) Tyler Built Corporation, Dalton, S.C. Chairs | From Dalton between January and June that shipper has 94 shipments with 1 movement to Texarkana, Ark.; 1 to Kansas City, Kans.; 3 to Jackson, Miss.; 17 collectively to Lake Charles, New Orleans, Ruston, Shreveport, and Baton Rouge, La.; and 73 collectively to Beaumont, Port Arthur, Baytown, Fort Worth, Dallas, and Houston, Tex. | Herrin in conjunction with connecting lines is used primarily. Ryder, Johnson, and Roadway are also used. | Shipper asserts that it has been unable to develop its business to the benefactment because of the lack of single-line service to points in this area. Shipper offers between 7 and 10 days for delivery to the Southwest (it needs 5- or 6-day service). Ryder has refused to originate traffic at Dalton unless the shipment weighs over 1,000 pounds. It refused to accept shippers traffic in the fall of 1965, and it has requested shipper to originate its traffic with another carrier for interline with Ryder at Greenville, S.C. | Herrin and Johnson |
| 18. (574) Neil Pulato (a corporation), Orangeburg, S.C. | See shipper under Georgia heading | | | |
| 19. (629) Hunter Southern, Inc., Seneca, S.C. Clothing | See shipper under Louisiana heading | | | |
| | From Seneca to Jackson, Miss., Baton Rouge, La. and points in Texas, and Arkansas. About 5 million pounds moves annually. | Ryder, Thurston, East Texas | Joint-line service inadequate. Wants 3-day service to points in Arkansas, Louisiana, Mississippi, and Texas | Herrin, Johnson |

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Summary of evidence of supporting shippers—Continued

SOUTH CAROLINA—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting applicant | Applications supported and remarks |
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| 21. (602) Stepan Products, Inc., Lesley, S.C. and Leeds, N.C. Children's clothing | From Lesley and Leeds to points in Texas, Louisiana, and Missouri. Monthly shipments range between 1,000 and 5,000 pounds. | Bowman, RLA, Ryder | Joint-line service inadequate | Bowman, Johnson |
| 22. (767) Raybestos Manhattan, Inc., North Charleston, S.C., Asbestos cloth, yarn, tape, and rubber products. | From Charleston to Little Rock, Ark. (500 pounds a month), Baton Rouge (600 pounds a month) and Shreveport, La. (400 pounds a month); Columbus and Jackson, Miss (40,000 pounds a month), Kansas City, Mo., Kansas City, Kans. (2,000 pounds a month) and Dallas, Fort Worth, and Houston, Tex. (8,000 pounds a month). All shipments are LTL. | Joint-line services of Roadway - ABF, Johnson - T&J, Johnson - TSJ, Roadway - Robinson, and Southern - Dixie Line; single-line services of Roadway and Watson-Wilson. | Prefers single-line service. Too many tracing problems in joint-line service. Wants 2- or 3-day service to all destinations | Bowman and Johnson |
| 23. (768) Blair Mills, Inc., Dalton, S.C. Tweeds and wool cloths | From Dalton to points in Mississippi, Louisiana, Missouri, Texas, and Arkansas. Shipped about 340,000 pounds to above States during a 7-month period in 1965 in TL and LTL lots. | Ryder, GAF, Oswald, RAI, Overnite, Roadway, CTMW, and PAD. | Too much lag time between shipment and delivery. Allows 7 and it says load time into Jonesboro, Ark. is not adequate. Needs at least 5-day service | Bowman, Johnson. Shipper has rail service. Receiving good service from Bowman using Memphis as gateway. Has one single-line service presently available. Has numerous joint-line services available. |
| 24. (983) The Pyle-National Company, Aiken, S.C. Lighting fixtures and equipment. 25. (984) The Pyle National Company. | From Aiken, S.C. to points in Mississippi, Louisiana, Texas, Arkansas, and Missouri. Shipper transported in excess of 100 shipments to the destination points during the last quarter of 1966. Average weight was 500 pounds. Less than 500 above. | Southeastern, CTMW, Watson, Red Ball, Johnson, Bowman. | Wants direct single-line service for faster and more reliable delivery and to lessen damage. Allows 5 days for delivery. | Bowman. Shipper had no specific complaints with existing service. |

TENNESSEE

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| 1. (24) Catoosa Foundry of Chattanooga, Chattanooga, Tenn. Cast iron fittings. | From Chattanooga to Houston and Orange, Tex. Approximately 60 percent of shipper's traffic moving to points in Texas will move in TL lots with the remainder moving in LTL lots. The TL shipments will weigh between 37,500 and 40,000 pounds. The LTL shipments will weight between 1,000 and 6,000 pounds with the average shipment weighing about 500 pounds. Between 40,000 and 45,000 pounds would move to points in Texas each month. Approximately 25 percent would move to Houston and the remainder would move to Orange, Tex. | Baggett and Bowman originate this traffic. Shipper also uses Southern Railway. Robinson Freight Line also originates shipper's traffic. | Shipper prefers single-line service because faster service is provided and there is less chance losing the loose castings which make up a shipment. Also, shipper indicates that claims on multiple-line shipments are handled rather slowly. | Baggett: Shipper did not know of any single-line service from Chattanooga to the Texas points. Baggett seeks to serve. It was not aware that Roadway, which has a terminal in Chattanooga, has a single-line service between Chattanooga and Houston. Shipper did not know of any claims with respect to its traffic moving to Houston or Orange. It has not investigated whether Ryder offers single-line service from Chattanooga to Houston and Orange. |
| 2. (156) Memphis, Texas. | See shipper under Georgia heading. | | | |
| 3. (158) Cumberland Coach Company, Chattanooga, Tenn. Wood and wicker chairs and poultry equipment. | From Chattanooga to points in Louisiana, Texas, and Arkansas. Between 8/1/65 and 7/1/66 shipper had movements to New Orleans, Lake Charles, Shreveport, La.; Kansas City, Kans.; Dallas, Houston, and Texarkana, Tex.; Kansas City, Mo.; and Little Rock, Ark. The shipments weighed a total of about 500,000 pounds. Shipper forms about 500,000 pounds annually to Mississippi points. | During the above-mentioned period Ryder was used on shipments to New Orleans and Shreveport; Central was used to Lake Charles, New Orleans, Dallas, and Houston; T.I.M.E. to Kansas City; Roadway to Dallas and Houston; CTAMW to Houston, Texarkana, and Little Rock; Bowman to Dallas, Texarkana, and Houston; Watson-Wilson to Kansas City, Mo.; Baggett to Lake Charles; and Southern to New Orleans and Houston. Shipper also uses private carriage on this traffic but would like to discontinue its use to the inroutes described in the territory. | Shipper expresses a need for consistent overnight service to points within 500 miles of Chattanooga, and second-day service to Dallas and Houston. It is not satisfied with Ryder's service to New Orleans on export shipments because on two such shipments in the year before the hearing, Ryder, although allowed 4 to 5 days, was unable to deliver the shipments before the boat sailed from New Orleans. Shipper indicates that the existing service is unsatisfactory. It has difficulty in obtaining pickup service from Roadway and Ryder. Also, shipper has experienced difficulty in tracing. Ryder has informed shipper that it does not want to handle shipper's TL traffic. | Bowman. Shipper has used Bowman and found its service satisfactory. |





Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| [illegible] Chattanooga, Tenn. [illegible] | From Chattanooga during 1965 and the first 6 months of 1966 shipper had movements to various cities and Springfield, Mo.; Houston, Harlingen, Galveston, Fort Worth, Beaumont, Arlington, Texarkana, and Orange, Tex.; Baton Rouge, Monroe, Baton Rouge, Slidell, Lake Charles, Shreveport, West Monroe, and Buston, La.; Greenwood, Jackson, Columbus, Meridian, Hattiesburg, Greenville, [illegible], and Tchula, Miss. Shipper's records do not show the origin, destination, and weight of each shipment. It has [illegible] shipments to Texas during this period weighing a total of about 250,000 pounds, 27 shipments to Arkansas weighing a total of about 50,000 pounds, 260 shipments to Mississippi weighing a total of about 75,000 pounds, 2 shipments to Mobile, Ala., weighing a total of about 1,000 pounds, 1 to Roxboro, N.C. weighing 450 pounds, 47 to Missouri weighing about 20,000 pounds, 225 to Louisiana weighing about 125,000 pounds, and [illegible] weighing about [illegible]. | Service Lines, Southern Pacific, Roadway, T.I.M.E., Watson-Wilson, Thomas E. Sloan, Centra. | Shipper claims [illegible] are subject to [illegible] and that service is better [illegible] serve. It has received complaints from customers in Mississippi and Louisiana relating to slow delivery. It has not received complaints about Bowman Inc. It has received complaints about the [illegible] carriers. Shipper wants second-morning service to points in Mississippi, Arkansas, Louisiana, and [illegible]-day service to points in Texas and Missouri. | Bowman. Bowman presently handles shipper's traffic from Chattanooga to Memphis. Is [illegible] to participate in the Common Cities traffic. Bowman opposes the consenting carrier. |
| [illegible] Chattanooga, Tenn. Charles [illegible] Group Tank Battles, glass ware, and wood on drum mums | From Chattanooga to points in Mississippi, Louisiana, Texas, and Missouri. All of shipper's traffic moves in TL lots weighing 30,000 pounds. Between January and June 1966, shipper had traffic moving to motor common carriers from Chattanooga to Greenwood, Laurel, and Meridian, Miss.; Vercinnes, Tex.; and Kansas City and Springfield, Mo. Between January and 7/1/66, at least 40 shipments in private carriage to Camden, El Dorado, Little Rock, and Pinebluff, Ark.; Tupelo, Kosciusko, Baton Rouge, Lake Charles, Monroe, and New Orleans, La.; [illegible], Greenville, Greenwood, Hattiesburg, Jackson, Jarvis, Meridian, and Vicksburg, Miss.; and Beaumont and Houston, Tex. | To move equipment [illegible] is used to Little Rock and Greenwood and originates the traffic for Springfield, intermediate points. Central originates the [illegible] and [illegible] Baton Rouge, Lake Charles, Monroe, and New Orleans, La. Interlining with Southwest handles to Kansas City traffic. CTAMW and Service Lines interlining with Lone and Prices handle the Springfield traffic. A.C. Tate Superlines receives single-line service to this point. Roadway interlining with Central handles the various traffic. Private carriage is used to points where shipper has one, also only two-line service. It is used to return pallets and inner glass [illegible] Chattanooga. | Shipper's customers request overnight service. It is not satisfied that [illegible] for one of its customers to call at 3 p.m. and request delivery of an item at five. It advises before the [illegible] Although Ryder was used in the 6 months before the hearing, shipper indicates that this carrier wants only TL lots moving to the North. CTAMW renders good service but occasionally it does not have equipment one, also T.I.M.E. has not always been able to furnish equipment. Shipper's New Orleans customer informed it did not want Baggett to deliver and that if the traffic was not handled in private carriage, shipper would lose the business. | Bowman. It does not receive sufficient service from Bowman to points it can serve. Many of shipper's customers demand that shipments be handled in private carriage. It does not [illegible] City except that 2 day [illegible] Ms. emphasize about Goodman's service work [illegible]. Does if shipper had single-line service it will use some private carriage because it wants to return pallets and broken glass used in the manufacturing process. Those customers which insist on private carriage are located at New Orleans, Baton Rouge, Lake Charles, and Hattiesburg |
| 4. (174) Hitchcock Industrial Tire Company, Inc., Chattanooga, Tenn. Industrial tires and [illegible] tires and [illegible] | Outbound from Chattanooga between [illegible] and 7/1/66 shipments moved to Houston, Beaumont, Dallas, Fort Worth, Galveston, Houston, and Longview, Tex.; Pine Bluff, Texarkana, Ark.; Vicksburg, Tchula, Greenwood, Jackson, Columbus, and Meridian, Miss.; Springfield, Mo.; and New Orleans, Shreveport, and Baton Rouge, La. Inbound to Chattanooga between 12/31/65 and 7/1/66 nine shipments moved, collectively, from Dallas and Houston, Tex.; Pine Bluff, Ark.; and Meridian, Miss. | Service Lines used on shipments to Texarkana, Pinebluff, Jackson, Shreveport, Lake Charles, Houston, and Longview, Tex. Roadway used to Houston, Beaumont, Dallas, and Fort Worth. CTAMW used to Pine Bluff. Robinson is used to Houston, Jackson, Meridian, New Orleans [illegible], and Long Lines General is used to Dallas. Ryder handles traffic to Vicksburg, New Orleans, Tchula, Greenwood, Fort Worth, and Baton Rouge. Service Lines is used on shipments to Springfield. Greenwood is used to Shreveport and Watson C Sloan is used to Indianapolis. Inbound to Chattanooga Ryder is used from Houston, East Texas [illegible] at Memphis with Robinson or CTAMW is used from Dallas and Houston, Viking interlining with TCT at Hazlehurst is used from Meridian, GAF interlining with CTAMW is used from Pine Bluff, CTAMW interlining with CTAMW at Memphis is used from Houston, TC interlining with CTAMW at Memphis is also used from Houston, and Viking interlining with TCT at Hazlehurst from Meridian. | The [illegible] important to these shippers is [illegible] because they do not have the specific equipment to handle them. Thus a customer requiring a replacement, to that visit until private wants the tire and ships it. The Hitchcock firm is then forwarded to Chattanooga for credit to the customer. Dealers located at Jackson, Springfield, etc. Baton Rouge have only [illegible] time in transit. This per indicates that it has had difficulty in obtaining pickups from Ryder, Roadway, and Central. It calls to be under it at 12 p.m. but has to wait until the following day to obtain a pickup. Shipper wants 2-day service to Mississippi, Arkansas, and Louisiana, and 1-day service to Missouri and Texas. Ship per introduced an exhibit showing transit times on nine inbound shipments from points in Texas, Mississippi, and Arkansas. Shipper was not satisfied with the 4- to 5-day service on the shipments listed which represent from 4.5 to 15 percent of its inbound traffic during the study period. | Bowman. Shipper indicates that the inbound shipments are not an important or the outbound and that it does not route the inbound shipments |

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Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 7. (158) The Chattanooga Medicine Company and its divisions, Chattanooga, Tenn. Pharmaceutical drugs, patent medicines, flue stabilizer soaps, bleaching and cleaning creams | From Chattanooga during the first 6 months of 1966 shipments moved to Baton Rouge (46 shipments), Lake Charles (17), New Orleans (1), Natchez (40), Shreveport (6), New Orleans (84), and Ruston (2), La.; Pascagoula (7), Jackson (58), Laurel (22), Hattiesburg (13), Columbus (8), Vicksburg (14), Greenville (11), Greenwood (1), and Meridian (25), Miss. Shipper's traffic is seasonal. It ships more in the fall and early winter months, thus its annual volume moving to these points would be three times the number of shipments that [illegible] period. Shipper does not know what shipment a month moving to Kansas City and Topeka, Kans.; Carthage, Kansas City, and Springfield, Mo. Shipper has 700 customers in both of Louisiana and Mississippi. | Ryder and Jones are used to Baton Rouge, Lake Charles, New Orleans, and Houston. Robinson is used to Natchez and is a interline service to Shreveport. To Mississippi Bonnen originates the traffic and interlines at Birmingham and Mobile, Ala., and Memphis, Tenn., with West, Campbell, and Red Ball. | Shipper indicates that approximately 3 months before the hearing a representative of Ryder submitted to shipper a list of points the carrier did not want to serve in Mississippi and North and South Carolina. Fifty-three Mississippi points were listed. Shipper allows 5 days for delivery to Mississippi and it wants 3-day service. To substitute Ryder's service is described as slow. Shipper allows 7 days for delivery to New Orleans and not over 4-day service to other Louisiana points. Transit time is important because shipper's customers usually order only when they need the commodity. Shipper lost a Kansas City account because of poor transportation service rendered by T.I.M.E. Services to and from to Kansas City because it apparently does not move the freight from Chattanooga sometimes for 7 to 10 days after having the pickup. | Bonnen. Does it the application is granted, shipper would have to interline shipments to a vast variety of Mississippi points, other than Ryder, shipper indicates that it does not have single-line service to points in Mississippi. |
| 8. (159) Brush Candy Company, Chattanooga, Tenn. Candy | From Chattanooga during April 1966 shipper had movements to El Dorado, Jonesboro, Little Rock, Pine Bluff, Texarkana, and North Little Rock, Ark.; Baton Rouge, Lake Charles, Lockport, Monroe, New Orleans, Shreveport, and Thornton, La.; Columbus, Greenville, Greenwood, Hattiesburg, Jackson, Laurel, Meridian, Pascagoula, and Vicksburg, Miss.; Belmont, Dallas, Fort Worth, Greenville, Houston, and Port Arthur, Tex. The shipments weighed between 72 pounds and 19,960 pounds. There were about 150 shipments during this period. If it received adequate single-line service under Bonnen's proposal, shipper indicates that its traffic would increase by 15 percent. | Private carriage, Robinson, CYMIE, Ryder, Central, Altemus, T.I.M.E., Bonnen, Polynesian carriage is used to Texas. | Shipper needs protective service in both the summer and winter. Since it is unable to obtain protective service, some products cannot be shipped during certain periods. It wants a single-line service. Transit time complaints have been received. Shipper does not have protective service to points in Mississippi, except that provided by Altemus, once a week to Gulf Coast points. Ryder's service to Mississippi is not used because shipper believed that Ryder does not offer service to Mississippi. Another returned two shipments to Mississippi points which it indicated it does not serve. | Bonnen. Bonnen has been requested to provide protective service equipment on shipments to Mississippi but it did not provide this type of service. |
| 9. (876) Pillsbury Co., Chattanooga, Tenn. Food products | From Chattanooga, Tenn., to points in Mississippi and Louisiana. Approximately 330 million pounds annually. | Bonnen, Campbell, Ryder, Red Ball. | Joint-line service inadequate, wants overnight and not more than second-day service. | Bonnen. Shipper [illegible] complained about Ryder's service. |
| 10. (876) Chattanooga, Tenn. | See shipper under Pennsylvania heading. | | | |
| 11. (889) Memphis Furniture Manufacturing Co., Memphis, Tenn. Furniture | From Memphis, Tenn., to Mobile, Ala., and points in Georgia. Monthly 75 and 125 shipments ranged between 100 and 10,000 pounds. | Ryder, Alabama Highway, Cobb, Bonnen, Morris | Unsatisfactory service from existing carriers. Wants 3-day service. | Morris, Alabama Highway presently serves shipper in single-line service from Memphis to Mobile. Drop-offs in transit are required. Morris, Bonnen serves shipper in single-line service to Columbus. |
| 12. (889) Marco Bonnen Connection, Memphis, Tenn. Toilet preparations | From Memphis, Tenn., to Montgomery, Ala., and Columbus, Ga. Annual 300 pounds a shipment on an order basis. | Ryder, Bonnen, Gardner, Morris, Jack Cobb, Hunt | Needs faster service. Shipper was promised between 2- and 3-day service. Wants 1-day service. Presently allowing 5 to 9 days load time. | |
| 13. (918) Diamond Corporation, Memphis, Tenn. Bluing, adhesive, and cosmetics | From Memphis, Tenn., to Columbus, Ga. No figures cited as to frequency of traffic. Shipments weigh between 100 and 30,000 pounds. Most are LTL. | T.I.M.E., Hunt Trans | Desires single-line service because present service is too slow. Need overnight service to Columbus. | Morris. No evidence that existing service is inadequate. |
| 14. (968) White Swan Manufacturing Company, Murfreesboro, Tenn. Sporting goods | From Dallas, Tex., and Washington, Ohio., to Murfreesboro, Tenn. Shipments from above points estimated 500 and 2,000 pounds each day. From Murfreesboro to points in Texas (500 pounds a day), Louisiana (400 to 600 pounds a day), Mississippi (800 pounds a day), Arkansas (300 pounds a day), Kansas [illegible] (400 to 600 pounds a day). | Red Ball, T.I.M.E., Consolidated, Ryder, Smith Motorways, Pilkenton | Some shipments have been purchased because of late delivery. Wants faster single-line service. Average transit time of 7.5 days to Murfreesboro on eight shipments. | Bonnen. Transit time ranged from 5 to 14 days with [illegible] and Pilkenton. Shipper has some single-line service available from Murfreesboro to the [illegible] Boston. Lost a $7,000,000 order because of slow delivery time. Can presently use Bonnen in a joint-line service. |





Summary of evidence of supporting shippers—Continued

TENNESSEE—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 15. (919) Chevalier Corporation, Chattanooga, Tenn. Soft-drink coolers | From Chattanooga, Tenn., to points in Texas. From 5 [illegible] to 11,[illegible] Chevaliers shipped in excess of 75 shipments averaging about 2,500 pounds to points in Texas. During 1964 a total 1.1 million pounds were shipped to points in Texas with about 500,000 pounds going to the East Texas area. | Bonnen, interlining with Red Ball, Central, Couch, ABF, Other. Also used Robinson on originating carriage. | Wants fast single-line service so as to keep up with a competitor which has such service available. | Bonnen. Shipper has no specific complaints with existing service. In many cases the shipper does not specify the carriers. Ryder offers single-line service to some points in Texas. Bonnen. Delivery time is only critical in some cases. Shipper did not complain about existing service. It prefers single-line service. |
| 16. (919) Trader Products, Inc., Chattanooga, Tenn. Number paint pebbles and varnishes | From Chattanooga, Tenn., to Houston and Dallas, Tex., New Orleans and Metairie, La., and Hattiesburg and Jackson, Miss. From 1/29/66 to 12/8/66 shipper transported 24 shipments to the above points. Average weight was about 100 pounds. Shipper states the above figures represent about one-third of the traffic moving to the above destinations. One shipper under Alabama heading. | Bonnen, Robinson, Ala. Private Carriage. | Wants single-line service. Allows 3 days lead time and 4 days for manufacturing. | |
| 17. (88) Memphis, Chattanooga, and Nashville, Tenn. | | | | |
| | | Texas | | |
| 1. (7) Vitasoy Company, Jasper, Tex. Cleaned navy products | From Jasper to specified points in Alabama, Georgia, Florida, and South Carolina. During February, March, and April 1966, shipper had 40 shipments totaling 19,96[illegible] pounds, with the average shipments weighing [illegible] pounds to points in the [illegible] states. During the busy season those shipments will increase by 20 percent. Shipper has branches at Atlanta, Ga., Fayetteville, N.C., and Dallas, Tex., among others. | Red Ball originates the traffic and interlines with East Texas, Cole Chain, Central Bonnen, [illegible] Overnight, Mayer, and occasionally others. | Shipper wants single-line service because its commodities are easily damaged and subsequent change of the freight increases the risk of damage. Also, some of the present joint line [illegible] are circuitous. Although, even if granted the authority it seems Red Ball could still not render single-line service to points in Florida, shipper believes that it could eliminate 2 days in transit. | Red Ball. Shipper handles the bulk of its freight, which is truckload, in its own equipment. It would render Red Ball its LTL shipments. Of the shipments made during the study period, Red Ball, if it received the authority it seeks, would be able to handle those to Atlanta, Ga., Wilmington, Ala., and Greenville, S.C., on single line service. Suggest. Red Ball and Herrin offer joint line service from Fort Arthur to Mobile, Ala., but will not handle shipper's traffic at the rate desired by it. |
| 2. (75) Gulf Oil Corporation, Atlanta, Ga. Packaged petroleum products, tires, and tubes, and allied items | (a) From Fort Arthur, Tex., to all points in Alabama and Georgia presently served by Baggett. During March, April, and May of 1966, it shipped an average of 107,[illegible] 181 pounds a month of packaged petroleum products by motor common carrier to Alabama and Georgia. Of this volume, 91 percent moved in TL and the balance in LTL. About three TL and five LTL shipments moved each month. The TL shipments averaged 32,000 pounds and the LTL shipments ranged from 500 to 3,700 pounds with the average being 2,010 pounds. Approximately 80 percent of this volume moves directly to shipper's customers and the balance moves to its bulk plants. In addition to this volume, shipper handles about one TL a month to each of its bulk plants in Alabama in its own equipment. (b) From Atlanta it ships empty shipping containers and collapsable pillow tanks to Fort Arthur. The pillow tanks move in TL and LTL lots. (c) From Tuscaloosa, Ala., to its distribution centers at Dallas, Tex., it ships 20,000 pounds of tires and tubes a month. Motor carrier service would be used to handle such orders. See shipper under Massachusetts heading. See shipper under Georgia heading. See shipper under Louisiana heading. | (a) From Fort Arthur [illegible] Ryder, [illegible] central, Gulf Motors, Red Ball, Strickland, and connecting carriers are used. (b) From points in Alabama to Fort Arthur it uses Baggett, Georgia Highway, and Ryder in connection with several carriers. (c) Rail service is used from Tuscaloosa to Dallas. | Shipper wants second or third-morning delivery from Fort Arthur to points in Alabama and Georgia. Shipper prefers single-line service. It indicates that it receives not effective service from [illegible] (unnamed) carriers it is using and unsatisfactory service from others (unnamed). | |
| 3. (76) Dallas, Tex. | | | | |
| 4. (90) Dallas, Tex. | | | | |
| 5. (100) Houston, Tex. | | | | |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 6. (28) Dimmons Computer, Southern Division, Atlanta, Ga. Carbon paper goods | Inbound to its plant at Dallas, Tex.; shipper has traffic moving from specified points in States located on the East Coast such as New Jersey, North and South Carolina, New Hampshire, New York, Pennsylvania, and Connecticut. Between 2/7/66 and 5/4/66 shipper received a total of 75,230 pounds of LTL shipments from points in these States. During the same period shipper received traffic from Passaic, South Round Brook, Mt. Holly, and Elizabeth, N.J.; Winston-Salem, Elkin, High Point, Concord, Kings Mountain, Seaside Heights, Hickory, Burlington, Conover, Denton, and Buckingham, N.C.; Orangeburg, Pinehaven, Harrisburg, Roxbury, Carlisle, Denver, Valhalla, Everton, Lyons, Udell, and Tropolore Rose, S.C.; Manchester, N.H., Brooklyn, and Farmingdale, N.Y.; Philadelphia, Pa.; New Preston, Conn.; and Laporte, Va. | During the study period Roadway's single-line service was used to Dallas from specified points in New Jersey, North Carolina, and South Carolina. It was also used as the delivering carrier on interlined shipments from New Hampshire, New York, South Carolina, and Virginia. Other delivering carriers on interlined shipments include Gardena, Control, Transcon, Strickland, Lee Tanna, and Chief. During the study period Overnight, White, Manheim, Imperial, and Watkins originated shipments at points in South Carolina. Lee originated shipments at Manchester; Thurston originated North Carolina shipments, Ben Davis originated South and North Carolina shipments; Dyder originated South Carolina shipments; Johnson originated shipments from South Carolina; Kalmia originated shipments from Connecticut; Interstate and Fillion originated shipments from New Jersey; Rhim and Transcontinental originated shipments from North Carolina; Fleter originated a shipment at Farmingdale, and Old Dominion originated a shipment at Laporte. Single-line service was rendered by Strickland from Brooklyn and Philadelphia and by Consolidated from Philadelphia. | Shipper has experienced difficulties with time in transit and consistency. It introduced traffic studies of shipments delivered between February 7 and March 4, 1966. Transit times to Dallas are given on 66 shipments. Weekends are included in most of the computations. A total of 53 of the shipments originated in North and South Carolina. On a majority of these originating in North Carolina shipper received 6-day service or better and in a majority of those originating in South Carolina shipper received 7-day service or better. On shipments originating in New York it received 7- and 8-day service. On the one shipment from New Hampshire it received 8-day service, from Virginia it received 7-day service on one shipment, from Pennsylvania it received 6-, 7-, 10- and over 10-day service; and from New Jersey it received 6-, 10-, and over 10-day service. | Johnson and Broadus. Of the 66 shipments for which transit times were given in the study, Roadway handled slightly over 40 in single-line service from New Jersey, and North and South Carolina. It rendered between 4-fast including weekend) 7 and 10- (including weekends) day service. Its average transit time including weekends was about 6 days |
| 7. (288) Hamlin, Tex. | See shipper under Georgia heading. | | | |
| 8. (318) Eastland, Tex. | See shipper under Georgia heading. | | | |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency, of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 9. (319) North-Western Corporation, Dallas, Tex. Floor goods | Inbound to Dallas, shipments are received from specified points on the eastern seaboard with the majority of the freight moving from North and So...h Carolina. ...ipments weigh from .66 to 2,900 pounds. One shipper receives about 3,000 pounds a month on the average. | Roadway is the primary single-line service utilized. Origin or intermediate carriers used are Ryder, Dick, Tiger & Beasley, and Thurston. Delivering carriers used are Central, Lee Tanna, Derrick, Red Ball, Strickland, and Transcon. | Transit time and consistency of service are important in order for shipper to maintain an even flow of production in a highly competitive industry. The inbound shipments are used within a week after delivery. Shipper wants 3-day service, including weekends, in the inbound traffic to Dallas. It is open to receive freight on Saturday. A transit time study of all the shipments received at Dallas between January and October 1965 was introduced. It demonstrates that, including weekends, the majority of shipments from North and South Carolina were delivered in 5 or less days with the remainder showing transit times of between 7 and 10 days. In the majority of the cases shipments from the Middle Atlantic States shipper receives delivery in 7 or less days including weekends. The majority of the shipments from Atlanta, Ga., were delivered in 5 or less days including weekends. And the majority of shipments from New England were delivered in 7 or less days including weekends. Shipper also introduced a list of shipments delivered during June and July 1966. It shows transit times similar to those discussed above. It says is not satisfied with the transit times | Bowman and Johnson. |
| 10. (320) Fashions of Texas, Inc., Dallas, Tex. Dress goods | ...ed to Taylor, Tex., shipments are ...marily from points in North and South Carolina and from other specified points on the eastern seaboard. Shipper receives at Taylor about 10,000 pounds a month from points in the origin territory. | The single-line service of Roadway has been used from the Carolinas and Stonington from New Jersey origins. The interline services of these two carriers, in addition to Roadway have also been used. | Shipper wants 3-day service including Saturday. Transit time is important because it is a factor in the time it takes to market shipper's commodity. Shipper's customers require a consistent service so that it can schedule its production. It is not satisfied with the transit time of the existing carriers. A transit time study of 32 shipments tendered to Taylor between January and July 1966 was introduced. Transit times were given for 20 shipments. The computations include weekends. Both of the shipments listed require only two days from an interline point, which will be indicated below in parentheses. These shipments from Virginia were delivered in 10 (from Baltimore, Md.) and 6 (from Baltimore) days, respectively. Ten shipments were delivered from North Carolina in 4, 5, 7, 5, 6, 5, 7 (from Memphis, Tenn.), 5, 6 (from Charlotte, N.C.), 6 (from Memphis) and 7 (from Memphis) days, respectively. Thirteen shipments were delivered from South Carolina in 7, 7, 8, 8, 7, 5, 6 (from Charlotte), 6 (from Greenville, S.C.), 10 (from Charleston), 6 (from Memphis), and 7 (from Greenville) days, respectively. Shipper indicates that time in transit is important because of the seasonal nature of its business. It expresses a need for the proposed 3-day service of Bowman and Johnson from the Carolinas to Dallas and Fort Worth. | Bowman and Johnson. If their applications are granted Bowman and Johnson would tender...to the terminal at Dallas for delivery to Taylor. |
| 11. (327) Bell Textile Company, Dallas, Tex. Textiles and fabrics | Inbound from specified points in North and South Carolina and from Griffin, Ga.; shipments were to shipper's address located at Dallas and Fort Worth, Tex., Fort Smith, Ark., and Oklahoma City and Tulsa, Okla. From Griffin shipper receives at its five stores collectively about 30,000 pounds a year. From the North and South Carolina points it receives collectively 60,000 pounds a year. | Ryder is used from Griffin to Houston where it interlines with Red Arrow for delivery to Dallas. Ryder, Dixie, and Red Arrow are used from Tarboro, N.C., Overnight and Transcon from Cola, S.C. to Dallas, Transcon to Oklahoma City, Ryder interlining with ...ator ...otte and Red Arrow to Fort Worth from Griffin, G.I.B.E. from Jamestown and Greensboro, N.C., to Tulsa and Oklahoma City. | | Bowman, Johnson, and Texas. |

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Summary of evidence of supporting shippers—Continued

Texas—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applicable supported and reasons |
|---|---|---|---|---|
| 12. (221) Wieser Company Inc., Dallas, Tex. Household chemicals and detergents | From Dallas to specified points in Georgia and Alabama about 11 shipments move each month. The shipments weigh an average of 230 pounds. During July and August 1966 shipper had agreements to Savannah, Thomson, Hapeville, and Atlanta, Ga., and Birmingham, Selma, and Eufaula, Ala. Shipper expects its volume to increase 25 percent annually. | Jordan and Jones originate shipments to Florence and Georgia | Shipper has experienced difficulty with the service of carriers in that this carrier has been 2 or 3 days late in making pick ups | Denver, Hunt, and Johnson. Shipper not satisfactory in view its service of Jones |
| 13. (222) Hamilton Manufacturing Company, Dallas, Tex. Industrial process goods Outbound—clothing | Inbound shipper receives at Dallas shipments from Clearwater, S. C., Atlanta, Ga., and other points in the South. Shipments are received weekly and weigh between 150 and 31,000 pounds with the average shipment weighing about 825 pounds. Outbound shipments are made daily to points in the local trade as Birmingham, Mobile, and Montgomery, Ala., Columbus, and Atlanta, Ga., and Jackson, Miss. The average outbound shipment weighs about 175 pounds | Inbound, shipper uses Roadway, East Texas, and Jordans. Outbound, it uses Braniff, East Texas, and Red Ball | Shipper is not satisfied with the outbound service. It has received complaints and has had orders cancelled because of delays. Shipper complains that Red Ball has not made pickups until between the day following the request to the evening of the third day. Consistent transit time is important on inbound shipments because shipper has to be able to schedule its manufacturing process. It cannot maintain a large inventory. Outbound transit time is also important | Herrin |
| 14. (223) Dorn, Dallas, Tex. Industrial and consumer rubber goods | Inbound from Dallas shipments are made on a weekly basis to Atlanta and Columbus, Ga., Jackson, Miss., Birmingham, Mobile, and Montgomery, Ala., and other points in Mississippi, Alabama, and Georgia. The average shipment weighs 525 pounds. Inbound at Dallas shipments are received from Atlanta weekly. | No outbound shipments Mercury and Red Ball are used. On inbound shipments Transcon and Roadway are used | Transit time is important because shipper's customers order parts when they are needed they do not maintain large inventories. To meet indicates that shipments are delayed when an interchange is involved | Herrin. Shipper has not had any complaints with respect to the service of Mercury and Red Ball |
| 15. (224) The Candy Vendor, Incorporated, Dallas, Tex. Candy | During April, May, and June 1966, shipper moved 101,487 pounds from Hackleburn to Atlanta, Ga., Birmingham, Ala., Crossville, Miss., and to other points in the territory involved which shipper expects to be interchanged at Atlanta, Ga. Shipper expects its volume of shipments to increase 30 percent annually. About 10 percent of the above-described tonnage was shipped to Atlanta, Birmingham, and Crossville. The remainder moved to points in Florida, and North and South Carolina through Atlanta. | Red Ball originates 80 percent of shipper's traffic and interlines with Roadway and East Texas Central delivers the Florida shipments | Consistency of service is important because shipper wants to be able to tell a distributor when the shipment will be delivered so the latter can plan his orders. Shipper complains that complaints have been received on shipments moving to Crossville, Birmingham, and Atlanta it could not cite any specifics | Red Ball. The interline service of Red Ball and Roadway has been generally satisfactory but shipper prefers single-line service |
| 16. (225) Hartsell Press, Inc., Dallas, Tex. Printed matter | From Dallas shipper has weekly movements to Atlanta and Columbus, Ga., Montgomery, Mobile, and Birmingham, Ala., and Jackson, Miss. Shipments weigh between 100 and 20,000 pounds. | Transcon Lines and Brownell | Transit time is important because shipper's customers place their orders when they need the material, or advertising copies is dated and its delivery is scheduled. Shipper wants carriers to handle as much as possible of its traffic. It complains that with Brownell it has experienced poor pickup service, slow delivery, and missing pieces. This carrier informed shipper that it did not wish to handle shipper's traffic to the Southeast. | Herrin. Shipper is satisfied with the existing service to Birmingham and Atlanta but it believes that it could use additional service to these points |
| 17. (226) Hammill Paper Company, Dallas, Tex. Printing machines and tube-type paper | From Dallas shipper moves about 3,500 pounds a month collectively to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. The average weight of each shipment is approximately 300 pounds. Shipper also moves about 3,500 pounds a month to Florida, Georgia, and North and South Carolina. | Jones to Greenville, Transcon and East Texas to Birmingham and Atlanta | Because of the size of its loads, shipper has a problem with congestion during peak shipping periods. Red Ball motor daily pickups and utilization of this carrier would offer some relief to shipper's congestion problem. Shipper wants consistent second-morning service to Atlanta and Birmingham, and overnight service to Greenville | Red Ball, Inbound, Dawson, and Jamieson |
| 18. (227) Dallas, Tex. | See shipper under Mississippi heading. | | | |
| 19. (228) Peterson Oil Company, Dallas, Tex. Petroleum products in drums and packages | From Dallas to points in Mississippi, Alabama, and Georgia. Some of the points to which shipments move are Jackson, Miss., Birmingham, Mobile and Montgomery, Ala., and Columbus and Atlanta, Ga. The shipments weigh between 300 and 1,000 pounds. | East Texas, Cardwell, and Transcon | Transit time is important to shipper because it is soliciting new business in Alabama and Georgia and an important factor to point to transit time. Cardwell service is not satisfactory because it has been slow in making pickups and deliveries and shipper has experienced tracing and claim problems with it. Specific examples of the poor service of Cardwell were cited by shipper. | Herrin. |





Summary of evidence of supporting shippers—Continued

Texas—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applicable supported and reasons |
|---|---|---|---|---|
| 20. (229) Alexander Wells, Dallas, Tex. Carrier in full truck | Inbound to Dallas from Greenville, Miss., shipper receives about 100,000 pounds a month. Each TL shipment weighs about pounds. Shipper expects an annual increase in the volume of 15% percent. | Jones. Single-line service is used from Greenville to Dallas | Shipper wants to have a choice of single-line carriers from Greenville to Dallas. It indicates that only Jones holds single-line authority from Greenville to Dallas. Jones service is essential but not satisfactory because it does not always provide overnight delivery. Shipper wants to have the services of an additional carrier | Red Ball. Shipper indicates that although overhead service from Greenville to Dallas its route is circuitous |
| 21. (230) Temple Industries, Doubled Seat Division, Pineland, Tex. Motor vehicle seat | From Pineland during the first 6 months of 1966 shipper moved 16,444 pounds by Red Ball and 76,843 pounds in private carriage in Alabama, 58,193 pounds by Red Ball and 4,852 pounds in private carriage to Georgia, and 8,840 pounds by Red Ball and 19,830 pounds in private carriage to Birmingham. In Alabama the majority of its shipments go to Birmingham. Other Alabama points shipped to are Decatur and Huntsville. In Georgia shipments move to Atlanta, East Point, Rome, Athens, Albany, and Valdosta. The majority of its Georgia shipments go to Atlanta and about 20 percent of its Mississippi shipments move to Greenville. | Red Ball and private carriage. | Shipper wants to have a choice of single-line carriers from Greenville to Pineland. It is dissatisfied with the present service of Red Ball as well as that of the private carriage operations and feels strongly in favor of Red Ball as southbound shipments. It indicates that Red Ball is the only motor carrier serving Pineland | Red Ball. |
| 22. (231) Southwest Spring Manufacturing Company, Dallas, Tex. Springs, precision wire forms, metal stampings, and wire-forming machines | From Dallas shipper moves about eight LTL shipments weighing about 3,000 pounds to Batesville, Ark., each month. Shipper also has movements to Mobile, Ala. | Jordans and Red Ball originate shipper's traffic | Shipper wants 6-hour, single-line service with consistent second-morning delivery. It has experienced losses with interchange. | Support. |
| 23. (232) Frontenac Artic Air, Division of Lone Star Manufacturing Company, Fort Worth, Tex. Automotive air conditioners. | From Fort Worth about 20,000 pounds a month move to Birmingham and Florence, Ala., and Atlanta and Columbus, Ga. All are LTL shipments. Shipper has about 60 shipments a month with each shipment weighing an average of 300 pounds. Shipper also has movements to the stores of a specified customer which stores are located in Mississippi, Georgia, Alabama, Tennessee, Virginia, North and South Carolina, and Florida. | Roadway, Mercury and Merrin. | Shipper wants direct, single-line service. It is not satisfied with the existing service because of delays and damage. Shipper has complained to Mercury and it has received complaints with respect to the interline service of Merrin. | Support. |
| 24. (233) Utley Carpets & Draperies, Fort Worth, Tex. Carpets in rolls. | Inbound to Fort Worth shipper receives about 11,000 pounds a year from Atlanta, Ga., Greenville, Archer Dalton, Trenton, Rossville, and Dalton, as indicated to its affiliated store in Dallas, Tex. Shipper receives commodity within 10,000 pounds of the amount received at Fort Worth. The shipments to Dallas move from the above-described origin points. | Georgia Highway Express originating with Dunwoody, GA interlining with Southern and Central; MCA interlining with CT&AM and Southwest; MCA interlining with T.I.M.E. and the Chief; Daggett interlining with Mercury; Georgia Highway interlining with Mercury; MCA interlining with Southwest; Mercury interlining with East Texas, Roadway Northern interlining with Gardner and Central | Shipper wants direct, single-line service from the named points in Georgia to Fort Worth. Transit time is important because shipper orders the carpet when a customer places an order with it. Shipper has lost sales because it could not deliver when promised. Shipper interposes 6 transit time study of 70 shipments delivered to Fort Worth from the aforementioned Georgia points between 6/8/66 and 6/23/66. The stated shipments were as about 80 percent of the shipments received at Fort Worth during this period. In reading weekends about 40 of the 70 shipments for which transit times were given, were delivered in 5 or less days. The remainder were delivered in 7, 8 or 9 days (including weekends), except four shipments which were delivered in 11, 12, 13, and 14 days, respectively. Shipper is not satisfied with these transit times and it indicates that transit times to Dallas are similar. | Support. |

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Summary of evidence of supporting shippers—Continued

73262—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 26. (29A) Gibson Products Co., Georgetown, Tex. Gypsum wallboard | From specified points in the Southwest shipper has movements to its 11 discount centers in Arkansas; 20 discount centers in Louisiana; and 53 discount centers in Texas. The shipments weigh between 100 and 500 pounds each. Shipper has two stores in Little Rock, Ark., one in Texarkana, Ark., one in Greenville, Miss., one in Jackson, Miss., one in Shreveport, La. It is expected to open a second store in Shreveport, one in Baxter City, La., and at these points in Texas which Strickland can serve. It has two stores at San Antonio, one each at Temple, Waco, Wichita Falls and Dallas in the Dallas area | The interline services of the following carriers were used on the movements listed in shipper's transit time study: Ryder Red Ball, Georgia Highway, East Texas, Dayton, Quick, Cole, TSP Railroad, Jenkins, V.I.P.E., Hardcastle, Perkins, Mercer, [illegible], Lone Star, Red Ball, Beasley, Dale, Thornton, Central, Tinsley and Duncan. The Kingsley line service of Yandeen were also utilized | Shipper is not satisfied with the transit times of existing services. It introduced a study of 45 shipments delivered between 10:11-60 and 1/30/64 to the stores located at Palestine, San Antonio, Waco, Temple, Longview, Lubbock, Abilene, Tyler, Kingsville, Harlingen and Big Spring. The Shreveport, La., five shipments and cable, 8 Nov. eighteen shipments, forty-two of the shipments originated at points in Georgia, 15 at points in North Carolina and 8 at points in South Carolina including weekends and [illegible] the average transit time from the three-State origin area to points in Texas is 5.6 days. The average transit time of the listed shipments to Shreveport is 5 days, and the average transit time to Dallas is about 7 days | Strickland and Red Ball. Shipments moving from Georgia points other than Atlanta and at points in North and South Carolina would have to be intercepted to Strickland by the originating carrier at Atlanta, Ga. |
| 27. (29C) Dallas Chamber of Commerce, Dallas, Tex. | | General increase in population and business of Dallas area from transit rates to origin points particularly those destined to Carrollton-Farmers to 29 days on the survey of 125 shipments made by Chamber of Commerce witness | Opposes: at request of Strickland Transportation Co., and the Red Ball, Inc., freight [illegible] Witness specifically stated that witness appears solely to give data and is not supporting or opposing any carrier | |
| 28. Dallas Bag Co., Inc., Dallas, Tex. Cotton gin machinery and parts thereof | Outbound freight to Dallas of 400 to 10,000 pounds a crate primarily from points in Pennsylvania, South Carolina, and Massachusetts. | Roadway in single line freight forwarders are Red Ball freight or Dallas-Long Joint line service are Wilson-Brannon and Texas-Arizona Transportation and GCP Transportation are also used. | Desires to reduce inventories. Delivery service has been slow, when leaving plant at less than LTL rates. Cannot meet scheduled delivery as were necessary to coordinate inbound movements to production. Has customers in different areas required as scheduled delivery of parts from, South Carolina and rein from the New England area. Shipper experienced difficulties in tracing shipments. Shipper's transit time studies show that it is generally necessary [illegible] between 5- and 7-day service from the Middle Atlantic and New England States, 5- and 6-day service from the Carolinas, 4- and 5-day service from Alabama and Georgia and between 3- and 5-day service from Atlanta. | Smith, Johnson and Jones. |
| 29. (29E) Bonner Corp., Building Products Division, Dallas, Tex. Galvanized metal forms, mostly culvert pipes | From Dallas 100,000 pounds a month to Greenville, Gulfport, Hattiesburg, and Jackson, Miss. (LTL & TL), and to points in Alabama and Louisiana | Nearly percent by private carriage Red Ball, Dixie and Jordan. Shipper receives good service using Strickland to Little Rock, Ar., and Memphis, Tenn. | Relies on private carriage because of poor service rendered by existing carriers, and damage to merchandise. Strickland provides overnight service to Greenville and Jackson. | Strickland. |
| 30. (29F) Gunther Co., Dallas, Tex. Perfumes, cosmetics, and household items | From Dallas LTL shipments to points in Florida, Alabama, North Carolina, Pennsylvania, Georgia, New Jersey, New York, Arkansas, Connecticut, and Tennessee. Receives several shipments a month. | Nearly, Transcon, Jarvis, Red Ball, Roadway, Consolidated, Lee Way Motor Freight, TSP Motor Transport, Jordan, Quick, Ryder, Shipper Shipping, Brownell, and Ryder. Strickland Transportation Co., is no longer utilized because of problems with damage claims. Nearby has rendered good service to northern Florida. | Traffic has increased by 10 percent in last year. Shipments are COD to its dividual customers and complaints of delays in delivery were been frequent. Shipper has interlining problems of damage and difficulties in tracing shipments. Prefers premium 2-3 day direct-line service of applicants to points in Florida, Georgia, and North Carolina. | Strickland, Johnson and Jones. Under proper supervision or it was indicated that shipper was using joint-line service to a few points where direct service was available i.e. to Columbus, Ga., where Ryder can serve directly. Evidence of non-points was general. |

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Summary of evidence of supporting shippers—Continued

73262—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 31. (29I) Waste-Tex Textile Products Company of Texas, Dallas, Tex. Unidentified waste materials and rags, lint trimmings, ground cotton and synthetic piece goods | Inbound traffic to Dallas originates at Bethune and Salemaville, SC, and averages 31,000 pounds a month. Inbound traffic also originates at Winston-Salem, N.C. and averages ...50 pounds a month. Most traffic is LTL. | Jordans and Interstate joint-line service from Georgia points, interchange at Atlanta. Roadway direct from South Carolina, and Winston-Salem. Thursday and East Texas joint-line service. Piedmont Motor Lines-Roadway joint-line from Blacksburg, S. C. | Two to three days transit time proposed would enable shipper to reduce its inventory. Containers presently used too and three-line service to be inadequate. Inconsistencies in transit times interfere with an orderly inventory plan | Johnson and Brannon. Transit time study shows merely Roadway service. Ranges from 3 to 11 days. Many of the South Carolina points will continue to be interlined. For example, Piedmont Motor Lines is owned by Dearing-Gilliam Mills of Blacksburg, S. C. |
| 32. (29J) Charles Brumley Jr., Grand Prairie, Tex. Reproduction machine parts and paper and art supplies | From Grand Prairie 90 to 110 shipments a month 175 shipments were to Jacksonville, Miss., branch offices of shipper, and to customers in southern Mississippi | Red Ball and Brannon. | Service of Strickland to Jacksonville points has been very good. Air transportation is used two to three times a week for emergency shipments to branch offices because existing service is poor on emergency shipments. | Strickland. Witnesses from shipper's branch offices at Atlanta, Ga. and Jackson, Miss., also appeared |
| 33. (29K) Murray Co. of Texas, Inc., Dallas, Tex. Cotton gin machinery and parts thereof | Origins of inbound traffic to Dallas include points in Alabama, North Carolina, and Georgia. Outbound shipments move to points in North Carolina, South Carolina, Alabama, Georgia, Mississippi, Tennessee, Arkansas, and Louisiana. LTL shipments of repair parts, were inbound and outbound. Shipments of cotton gin machinery are usually made in vans, truckloads. | Private carriage is used. Roadway, Transcon, Red Ball, and United. Mercury is terminating also limited to used to Atlanta. | Company has grown 15 to 20 percent a year for the past several years. Shipments of repair parts must be expedited and existing service has been slow. Shipments of cotton gin machinery are bulk in vans; parts and must be timed to meet installation procedures. Shipper complains of mis-[illegible] of damage claims with Transcon. Shipper is not satisfied with transit time to the Carolinas and on inbound traffic. Its transit study shows that generally it receives 4-day service from Birmingham, Ala., and points in North Carolina, and 5- and 6-day service from points in Georgia. | Brannon and Johnson. While Roadway provides direct service between Tennessee and Dallas, shipper believes that use of Interstate will reduce transit times. |
| 34. (29L) Brass Craft Service Co., Inc., Dallas, Tex. Plumbing pipe connections, pipe joints, valves, brass, and copper [illegible] Outbound pipe fittings and valves | Shipments originate at Thomasville, N.C. Shipments are usually LTL. Shipper has a plant at Thomasville and the ultimate products (pipe fittings, valves, etc.) are usually manufactured, in part, at Thomasville and completed at Dallas. Some finished goods are shipped from Charlotte, N.C. Other items are partially manufactured in Dallas and then shipped to Charlotte for completion. | Roadway. | Shipper supports traffic from Thomasville to increase it percent. Delays in transit have occurred on shipments to customers overseas and on import shipments. On occasion, this has resulted in cancellation of orders. However, shipper was unable to give specifics. Most shipments take 5 days (range of transit time has been 3 to 8 days). Existing transit times generally range from 4 to 7 days, shipper believes that Strickland's proposed 2 and 3-day service from Atlanta to Dallas would reduce the total transit time and allow shipper to reduce the inventory at Dallas. Shipper uses the services of [illegible] or even and questions such service as being satisfactory | Brannon and Johnson. Strickland's transit time study is not impressive. Indicates that use of Interstate will reduce transit times. |
| 35. (29M) Top Value Enterprises, Inc., Dayton, Ohio Unidentified merchandise for use as premiums to promote trading stamps [illegible] personal communications at Dallas, Tex. | LTL shipments were from points in Georgia, North Carolina, South Carolina, Tennessee, Alabama, Virginia, and Mississippi, to the distribution center location at Dallas. Between 175,000 and 325,000 pounds are shipped during an average 4-month period. Over 1 million pounds are shipped during Christmas and Spring periods. | Joint-line services of Ryder-Red Arrow, 4th-Ryder-Red Arrow, Georgia Highway Express-Roadway, Georgia Express, V.I.P.E.-Red Ball, New Dixie-Roadway, T.I.M.E.-Texas, Dixie Express, [illegible] Texas, Consolidated Carriers-Transcon, Akers-United-Mercury (TIMEC-Red Ball, T.I.M.E.-Red Ball, and private carriage is utilized | Strickland. |
| 36. (29N) King Candy Co., Fort Worth, Tex. Candy | Ships 5,000 pounds a week from Fort Worth to Arlington, Ga., 2,000 pounds a week to Birmingham, Ala., and 1,000 pounds a week to points in Georgia other than Atlanta. | Mercury-United to Joint-line service and Transcon. | Shipper has a need for additional service particularly on shipments that are timed (i.e.) Christmas and Valentine candies. Shipper complained of a lost shipment with Transcon. | Johnson, Brannon, and Jonkovich. Shipper alleges that East Texas refused to handle any shipments to points not on its line. Shipper used Roadway in the past but alleges that Roadway does not desire to handle perishable freight. |

114 M.C.C.

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 36. (2533) Artcraft Novelty and Ornamental, Inc., Dallas, Tex. Imported Formica and household accessories. | Ships nationwide and also has LTL shipments to points in Florida, Georgia, Alabama, North Carolina and South Carolina. These LTL shipments are made approximately once a week. | To Florida: Herrin, Roadway, Mercury, and Howard Hall (intermodal). To Georgia: Herrin, Roadway (direct). To Carolinas: Roadway. | Shorter transit time desired particularly on items made to order and sent to contractors, viz., restaurant furniture. Single-line service desired to alleviate damage and tracing problems. | Herrin, Roadway, and Jones. |
| 37. (294) Consolidated Envelope, Inc., Dallas, Tex. Envelopes and accessories. | LTL shipments move to points in Alabama, Florida, North Carolina, Georgia, Tennessee, and South Carolina. Envelopes are shipped to retail stores on consignment so that there are returned shipments of unsold envelopes. Volume of traffic is seasonal. | CTNW, Mercury, Roadway, Red Ball, Gardner. | Growth is about 10 percent a year—especially in the Southeast. Retail consignees usually maintain small inventories and require expedited service. | Gardner, Jones, and Jones. Most difficulties seem to be in securing service on returned shipments moving to Dallas. |
| 38. (252) Coats and Clarke Sales Corporation, Dallas, Tex. Threads, yarns, tapes, zippers and needles. | Receives from 20,000 to 40,000 a week from origins (75 shipments). Seasonal shipments a week move outbound to Texarkana, Ark. Some shipments are received from Greenville, Miss. | Joint line: Eastern-Jones. Direct line: Southwestern Transportation to Texarkana. | Joint-line service causes inconsistencies in transit times interfering with maintenance of planned inventories. Shipper's transit time study shows that on the majority of its truckload shipments from Atlanta it is receiving 5-day service or better. | Jones and Red Ball. Shipper is satisfied with existing service to Texarkana. |
| 39. (252) Dallas Dixie Fabrics, Inc., Dallas, Tex. Textile products. | Shipments are received from North Carolina, South Carolina, Georgia, and Alabama. | The joint-line services of CTCWW, Thornton, CAF, Piedmont, Fasket, Overnite, Boerboom, Brewer, and Jones have been used. Mercury and Brevoort are no longer used. Herrin served their service to be poor. | Shipper expects a 25 percent increase in inbound shipments during the year. Transit time is important on productions made to order. Shipper desires single-line service. Shipper's transit time study shows that it is generally receives 5-day service from North and South Carolina and 4-day service from Georgia. | [illegible] |
| 40. (254) Custom Laboratories, Inc., Dallas, Tex. Intravenous solutions and hospital supplies. | Receives 100,000 pounds a month, mostly LTL, from shipper's facility at Chattanooga, Tenn. | Joint-line services of CTCWW, Brewer, Robertson are used to Memphis, Tenn. East Texas, Western-Gilmore, Strickland, and Red Ball are used from Memphis to Dallas. | Declines single-line service because of damage problems and inconsistencies of joint-line service. | Brewer. |
| 41. (262) Textile, Inc., Dallas, Tex. Outdoor signs and displays | Ships LTL and TL lots to points in Georgia, Alabama, Tennessee, Florida, South Carolina, North Carolina, Pennsylvania, New Jersey, and New York. Shipments average one a week to North and South Carolina, two a week to Georgia and Alabama, and two or three a week to Florida. | Private carriage is used. Joint-line originating carriers are Transcon, Red R.I., Strickland, Mercury, Roadway, Herrin, and Arkansas-Best. | Growth of traffic volume. Time in transit is important on shipments to service construction sites. Red Ball has difficulty interlining at Mobile on a shipment to Florida because Customs Inspection refused to accept the shipment unless solidly crated. Products are fragile so single-line service is preferred. Desirous better pickup service to avoid having to warehouse the signs. | Brewer, Jones, Jones, and Strickland. Shipper considers 5-day service to Southern Florida, 4-day service to Alabama, Southern Florida, and the Carolinas, and 7-day service to New York to be satisfactory. |
| 42. (26) City Products Corporation, Dallas, Tex. Continental variety store merchandise, Independence and white goods. | Receives LTL inbound shipments from points in South Carolina, Georgia, Florida, Tennessee, Kentucky, Maryland, Virginia, Pennsylvania, New Jersey, New York. Receives 75,000 to 80,000 pounds of textiles a week from points in the Southeast. Shipments are made to San Francisco, Los Angeles, Birmingham, Texas and Londonderry, but majority of shipments to Dallas warehouses. The traffic from various origins is seasonal in nature, i.e. Baltimore woody. | Freight Forwarders: Lawrence, Tennessee, Woody, Kentucky, Maryland, East Texas, Brown Valley Motor Lines, CTNW, and Viking Freight. | Growth of business requires quicker service. Transit time study shows a shipment from Troy, Pa., being in transit 11 days. Service averages 6 to 8 days from points in the Southeast. Shipper considers 5-day service from points in the Southeast to be reasonable. | Brewer and Red Ball. |
| 43. (265) Bakers Foods Company, Houston, Tex. Coffee and tea | Distributor-supplier located in 10 States. Shipper is primarily concerned with its roasting plant at Kinnelon, N.J. Mostly LTL shipments are involved. Ships about once a week from Houston to Jackson. | Red Ball and Ryder in single-line service | Coffee is sold to institutional buyers packed in paper bags because it is more economical, however, this renders the coffee susceptible to contamination from other lading and increases the need for speedy service. Coffee in bags is good for only one week. Complaints of contamination on shipments by Red Ball. Used Ryder for a short time after dissatisfaction with Red Ball, but Ryder's service was poor. | Herrin. Prefers overnight delivery of packages. |







Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 44. (263) Sanitary Supply Co., Houston, Tex. Textile products, janitorial supplies, general janitorial supplies, office supplies, etc. | Shipments average 100 pounds each and range from 25 to 500 pounds. Shipments move from outlet stores in Mississippi, Alabama, and Louisiana. Receives shipments from Atlanta, Ga. | Herrin, CTNW, Mercury, Intermediate Transport and Red Ball. CTNW is the only single-line carrier from Atlanta to Houston. | Shipper plans to expand into Georgia and Alabama. Schedule deliveries are important to meet advertisements of sales. | Herrin. Herrin, Red Ball, and several others provide single-line service to some points, but Herrin serves more than others. Shipper desires as few carriers as possible because of congested loading docks and thus desires Herrin's single-line services to be expanded. Red Ball. |
| 45. (264) Van Heusen Corporation, Greenville, Tex. Men's dress shirts. | LTL shipments to Birmingham, Ala., and Atlanta, Ga., as well as other points in Alabama, Georgia, North Carolina, South Carolina, and Florida. It is a 5 shipments a month to Atlanta and 5 ship vets a month to Birmingham. | Joint line services of Red Ball - Dixie, Red Ball - Transcon, Red Ball - Rawlins, Red Ball - Jenkins, Central - same as with Red Ball Dixie - Jack Cole. | Needs consistent single-line service to meet competition. Anticipates an increase in business. Most shipments are by Red Ball on joint line service with interchange at Memphis or Dixie. Delays have occurred at point of interchange. Since Red Ball serves shipper in single-line service to various other points, met improved service, and that service is good, shipper concludes that the Dixie result from the joint-line character of the operation. Time in transit is important on shipments to construction sites in order to meet construction schedules. Carpets in Mississippi have complained of delayed shipments and other customers are now ordering pipe from points other than Dallas as a result. Shipper accordingly desires additional service to augment that of Red Ball and TNT. | Herrin. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Records will interchange at Jackson to reach other Mississippi points and at Dallas to reach other Alabama points. |
| 46. (265) Texas Pipe & Supply Co., Corporate Headquarters, district warehouses at Dallas, Tex. Fabricated pipe | Shipper is interested about shipments from Dallas to Mississippi and points in the Dallas, Ala., vicinity. Three to four shipments a week move to Mississippi. Shipments range from 300 to 3,000 pounds. Most are LTL. | Red Ball, TNT, Transcon had used. It previously poor service because of delays and lost shipments. | Increase in business due to Government contracts. Desires direct, single-line service to Birmingham, Ala., and Atlanta, Ga. Has expressed complaints of slow delivery. | Herrin. Shipper has lost sales to a competitor located in New Orleans due to delays in transportation service. Records will interchange at Jackson to reach other Mississippi points and at Dallas to reach other Alabama points. |
| 47. (267) Hub Filter Company, Inc., Winnsboro, Tex. Oil filters for internal combustion engines. | Four shipments a month averaging 300 pounds to Birmingham, Ala., and four shipments a month averaging 150-700 pounds to Atlanta, Ga. Ships also to Miami and Jacksonville, Fla. and various other points in Southeastern United States. | The joint-line services of Red Ball-Transcon, Red Ball - Roadway, Red Ball - Brevoort, Red Ball - Titche have been used. | Has increase in business due to Government contracts. Desires direct, single-line service to Birmingham, Ala., and Atlanta, Ga. Has expressed complaints of slow delivery. | Red Ball |
| 48. (271) I.D. Brown Feder & Supply Company, Houston, Tex. Paints | Inbound shipments from Mobile, Ala., of paints, stains, and varnishes. One shipment a month of 10,000 pounds and two or three shipments a week of 500 to 1,000 pounds. | Joint-line services of Hunt to New Orleans there Herrin. Used for-merly and Red Ball to part. | Desires second morning delivery in order to meet competition, and hopes for next-day service. Shipper complains of damage with Mercury and Red Ball. | Herrin. Shipper desires that is supplied from the Los Angeles supplier more quickly than the Mobile supplier. Red Ball, Strickland. |
| 49. (272) Lawlines, Inc., Dallas, Tex. Outfall preparations, general merchandise. | Inbound LTL shipments of 10,000 pounds a month from Atlanta, Ga., and inbound shipments of 8,000 pounds a month from Birmingham, Ala. | Gardner, Roadway, Thompson, and CTNW. | Has increased business and enlarge consolidation service from all existing carriers. Needs additional service particularly during peak seasons. Desires single-line service. | Gardner and Red Ball. |
| 50. (273) National Tank Engineering Company, Inc., Arlington, Tex. Vertical flumes, chemicals, and other vegetable papers | Four shipments a week to Greenville, Miss. Birmingham, Ala., and Atlanta, Ga. Average weight of shipment is 300 pounds. | Joint-line service of Red Ball - Dixie and Roadway - Lee-gineering carriers. | Desires single-line service. | Red Ball. Shipper wants a carrier able to accept responsibility of carrying negotiable instruments. It, then, wants single line service to limit the number of parties handling the instruments. Red Ball has provided reliable service in the past. |
| 51. (274) Great Lakes Steel Corporation, Dallas, Tex. Metal expense primarily used by mobile home industry. | From Dallas shipments move to Atlanta, Ga., and Jackson, Miss. Shipments move to other Georgia points such as Americus, Vidalia and Valdosta. | CTNW, Red Ball, and Herrin. | Desires expedited service to meet competition. Lost customers due to delayed deliveries. | Herrin. Proposed service to Americus and Vidalia is on line haul with interchange at Atlanta. Territory considered only with overnight. |
| 52. (275) Texas Express Co., Dallas, Tex. Contract dock's claims for the Farah Mfg. Co. of El Paso, Tex. | LTL shipments with average weight of 350 pounds from warehouse in Dallas to Greenville, Miss.-1,500 pounds a week. | Gardner - direct single-line service Jones was used. | Has increased business. Shipper no longer uses Jones because of poor pickup service. | Red Ball Unrelated While shipper has had difficulties in service to Greenville due to [illegible] pickup service by Gardner and Jones, Red Ball has provided good service to the points it is authorized to serve. Strickland has also provided good service where authorized. Shipper, however, admitted that Gardner service had improved recently. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 46. (1791) GAF Mfg Co., Dallas, Tex. Cotton piece goods | LTL shipments. Receives 2-7 shipments a month from Talladega and Birmingham, Ala., and Atlanta and Chickamauga, Ga. Some shipments are received from Nashville. Van. | Alabama Highway, ETMT, Bowman, Transcon, Mid South, Southwestern, and MTA | Needs additional service. Traffic manager's office indicates that shipments are in transit 3 to 9 days, with most shipments in transit 4 to 7 days. One shipment from Chickamauga received in 20 days. The shipments from Birmingham and Atlanta received in 4 days | Bowman and Strickland Proposes joint-line service with interchange at Atlanta or Birmingham |
| 47. (1771) Henderson Manufacturing Company, Pittsburg, Tex. Tractor parts | Ships on rail and domestic parcel. 20 shipments a month to Southeastern United States—usually LTL ranging from 200 to 2,000 pounds | Joint-line service Red Ball interchanging at Memphis, Tenn., or Dallas, Tex., with ETMT Roadway or Bowman occasionally Southwestern Transportation originates the traffic. Private carriage is used for TL shipments | Declines single-line service to Birmingham, Ala., and Atlanta, Ga. Business expected to increase to 75 percent due to operation of a new foundry. Needs additional service to other points, particularly those in Florida and North Carolina. | Van Dale. |
| 48. (1774) Acme Textile Company, Dallas, Tex. Cotton-sheets, towels, and draperies (manufacturing) | Shipments weighing 500 to 1,100 pounds moves to points in Arkansas, Louisiana, Mississippi, and Tennessee. Inbound shipments move from North Carolina, South Carolina, Georgia, and Alabama (LTL). | Roadway, Gordons, North Alabama Express, and Red Star. | Shipper allows 10 days for movements from the Carolinas and 7 to 10 days for movements from Georgia. | Strickland Strickland proposes second-morning delivery from interchange point at Atlanta. Witness appeared to have little familiarity with the shipping practices of his company |
| 49. (1776) Friedrich Refrigerators, Inc., San Antonio, Tex. Private refrigerator manufacturer. Unit defrost chest and counters. Loading equipment, air conditioners, some shells, and miscellaneous parts | 40,000,000 pounds a year outbound from San Antonio and 81,307,500 pounds inbound. Shipments to points throughout Southeast and also beyond range of territory herein. Between 10 and 50 shipments moves a day | Inbound shipments from Alma, Texas, interlined at Memphis by Dealmaster, ETMT, and Strickland. Inbound shipments from Decatur, Ala., interlined at Memphis or Dallas by Gordons and ETMT. | Declines direct service to points in Arkansas or U.S. highway 82 and to Atlanta and Birmingham Time in transit important because many shipments to supply warehouses are on emergency basis. Alleged that on many occasions shipper has no motor service available to it. | Strickland Plans to route traffic over the Birmingham gateway. |
| 50. (1781) Texas Photocell Industries, Dallas, Tex. Electronic applicance, radios, television, microwave, ovens, power and plastics | From shipper's facilities at Dallas and Houston, Tex., 1,000 shipments a month, average weight of 150 pounds to all points in United States—most shipments from Dallas, but some from Houston. | Red Ball, ETMT, and Mercury. Interline shipments to Arkansas along U.S. Highway 82, which strickland still serves direct | Complaints of poor service, particularly to Jackson, Miss. Need for expedited service to Atlanta; parcels, 1-2 days, Gather's Day | Strickland Transit time study indicates that Red Ball has provided 2-day service to Jackson on most occasions although one shipment took 7 days. Shipper is not satisfied with 3-day service. |
| 51. (1782) Wentworth Carpets, Fort Worth, Tex. Carpet in rolls | Inbound shipments of 10,000 pounds a month, with average weight of 650 pounds from Chamblee, Atlanta, Cartersville, Lafayette, Lovejoy, and Trion, Ga. | Joint-line service of Baggett to Birmingham, Gordons to Dallas Central, Roadway and Georgia Highway Express Three-line service of Baggett-Gordons-Central or Roadway | Declines single-line service cost sales due to 10-day transit in time. Desires faster service to reduce inventory. | Baggett. |
| 52. (1783) Auto Air Accessories, Inc., Dallas, Tex. Automobile air conditioners and parts | Ships to Miami and St. Petersburg, Fla. Fayetteville, Tenn., Birmingham, and Gadsden, Ala., and to points in the Northeast such as New York City and Boston, Mass. | Joint-line service origin carriers are Mercury, Service, and Transcontinental. | Time in transit important during peak season due to requested increase in business. Desires consistent overnight service to Birmingham, 2-day service to St. Petersburg, and 4-day service to Miami and New York. | Bowman, Johnson, and Jones. Shipper advised to being basically satisfied with existing service, although there were several instances of delays. |
| 53. (1784) Forest Manufacturing Co., Dallas, Tex. Miami bath tubs and lavatories | Two TL shipments a month destined to Birmingham, Ala., Atlanta, Ga., and Jackson, Meridian, Greenville, and Greenwood, Miss., from Dallas and Houston, Tex. | Private carriage is used. Mercury direct to Birmingham, United and Gordons to Greenville. | Would like to eliminate private carriage. | Strickland. Wants overnight service to Jackson, 2nd morning service to Birmingham, and 3-day service to Atlanta. Jones and Bowman. Transit time study shows shipper generally satisfactory with service but with some extreme examples of delays, i.e., 19 days to Atlanta and 22 days to Memphis. |
| 54. (1785) Lorenz Surgical Manufacturing Company, Tuscaloosa, Ala. Stock room supplies, sumps, crutches, walkers, and safety rails | Has LTL shipments to Birmingham, Montgomery, Ala., Blytheville, Fayetteville, and Jonesboro, Ark., Atlanta, Chamblee, and Hapeville, Ga., Greenville, Miss., Jackson, and Memphis, Tenn., and various other points in Kansas, Oklahoma, and Missouri. | Strickland, ETMT, and Arkansas-Best freight in single and joint-line service. | Beneficial to instances of lost shipments due to delays in service or damage to 1% pounds. Has used both single- and joint-line services and prefers single-line because of greater consistency of service. | Transit time study indicates that 5-day service is normal but that service on at least one occasion was 12 days. |
| 55. (1787) Lummus Cotton Gin Co., Dallas, Tex. Cotton gin machinery | LTL traffic from Columbus, Ga., to Dallas, Tex. Shipments move from factory at Columbus to warehouse at Dallas. Between 7/21/58 and 8/14/58 shipper received 16 shipments totaling 58,010 pounds. | Direct line service of Roadway. Joint-line service of Baggett-ETMT and Cole-Morris. | Needs expedited service on repair parts. Desires to reduce inventory at Dallas warehouse. | Bowman. Transit time study indicates that 5-day service is normal but that service on at least one occasion was 12 days. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 42. (1811) Western Specialty Coatings Co., Division of Western States Lacquer Corporation, Dallas, Tex. Paint in cartons | LTL shipments from Dallas to Miami, Fla. | Joint-line service: ETMT, Herrin, C.D., Hall, all origin carriers, and Terminal Transport, Astral, Ryder, Bowman, to Miami, all delivering carriers are used. | Customer maintains small inventory so that transit time has to be important. Frequent complaints from customer about delays in service. Desires single-line service and fourth-morning delivery. | Bowman. Bowman has several shipper fourth-morning delivery. |
| 44. (1813) Lorna Fashions, Inc., Dallas, Tex. Outerwear—women's ready to wear items (inbound-piece goods | Wool shipments weigh 200 pounds or less. Ships nationwide, including points in the Southeast. Inbound shipments from Cleveland, Ga., Utica, Lenoir, Statesville and Charleston, S.C., Vadkin, Alleghany Mountain, Edenton, and Winston-Salem, N.C., and points in New Jersey and New York City. | Braswell, Roadway, M&A, Strickland, ETMT, Gordons, Transcon, Red Ball, and Greyhound Bus. | Has business growth. Time in transit important because sales are tied to advertisement schedules. Shipper's transit time study shows that it is receiving generally over 6-day service from the Carolinas, 7-day service from Georgia, 5-day service from Tennessee, and generally over 7-day service from New Jersey. Has increased business. Poor pickup service and customer complaints of delays. | Bowman, Jones, Johnson. |
| 45. (1911) Windor Industries, Inc., Dallas, Tex. Aluminum windows | Ships in LTL lots throughout the South. | Transcon, Mercury, Roadway, ETMT are used in joint-line service. Single-line service to some points in Carolinas by Roadway. | Has increased business. Poor pickup service and customer complaints of delays. | Bowman, Johnson, and Jones. Shipper seems most interested in service to Atlanta, which can be handled in single-line service by several protestants. |
| 46. (1921) Alco Division of Universal, Inc., Dallas, Tex. Syringes and needles | LTL inbound shipments from Deland, Fla. | Ryder, Red Arrow, Central, Brown Express are used in joint-line service with interchange at Houston. | Expects increased business. Existing service is inconsistent interfering with maintaining an inventory. | Bowman. Transit time study shows service ranges from 5 to 14 days with the average transit time being about 9 days. |
| 47. (1923) Kingsford Products, Inc., Dallas, Tex. Automobile air-conditioners and parts | From Dallas to points in North Carolina, South Carolina, Georgia, Florida, Arkansas, Alabama, and Baltimore and Silver Spring, Md. Four to five shipments a week to each point and frequency increases from May to July. Most shipments weigh about 100 pounds. Shipments are made to Atlanta warehouse. Shipper has experienced a 10 percent growth in business in the year before the hearing and expects the increase to continue. | Mercury-Johnson and Mercury-Tamlen. | Desires 2-day service. | Bowman, Johnson and Jones. Shipper unhappy with service to Florida because Tamlen holds shipments on its dock. |
| 48. (1924) Lone Star Ribbon Company, Inc., Dallas, Tex. Ribbon and bows | From Dallas between 11/11/55 and 7/20/56 shipper has 21 movements weighing an average of 2,043 pounds to Brooklyn, N.Y., South Hill, Va., Rock Hill, S.C., and Chattanooga, Tenn. Between March and July 1956 it has 45 shipments weighing 18,517 pounds from Chattanooga, Tenn. | Robinson Freight originates shipper's traffic from Chattanooga and interlines it at Memphis, Tenn., with East Texas and Jordan. No longer uses ETMT because transit times too long. | Transit time is important because of the fast turnover of shipper's commodities, the low inventories maintained by its customers, and a highly competitive market. Transit times to Memphis range from 1 to 9 days to interchange point and 3 to 11 days till delivery. | Bowman and Johnson. |
| 49. (1925) Seamless Textiles Corp., Incorporated Properties, Inc. Division of United Merchants and Mfg. Co., Dallas, Tex. Draperies, piece goods, and rayon acetate. | Inbound to Dallas shipments are received from specified points in North Carolina, South Carolina, Georgia, Massachusetts, New York, Pennsylvania, Connecticut, Virginia, and Louisiana. | Tid Dearmon, Ryder, MCT, PMG, Pilot, East Texas, Rex Dials, Smith's, Tolliver, Fredrickson, Hungerford, Rachel, Brandford, C&F, Steen, Spector, Dreeville, and Associated originate shipper's traffic. Acme, Central, East Texas, Jordanes, Red Arrow, Red Ball, Roadway, Strickland, TPM, Transcon, and Viking deliver interlined shipments. Acme, Braswell, East Texas, Harris, Republic, Roadway, and Strickland are used in single-line service. Some private carriage also. | Consistency of transit times important in order to maintain orderly inventories. Transit time study indicates shipments from Northeast range from 5 to 11 days and from Southeast 2 to 10 days with one interlined shipment from Old Fort, N.C., taking 17 days. | Bowman and Johnson. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 69. (206) Cole Machine Shop, Dallas, Tex. Air Conditioning component parts | From Dallas to Miami and Tampa, Fla., shipper had 16 agreements between January and June 1960. Between 60 and 70 percent of shipments must be delivered by a deadline date. | Herrin - Joint-line service with interchange at Atlanta. | Desires 4- or 5-day service to Miami and Tampa, presently operates on 10- to 14-day. Lead time on shipments covered by Herrin. Some air conditioners made to order, that had a deadline delivery date, had to work overtime. If transportation time could be cut, overtime could also be cut resulting in substantial savings. | Denied. |
| 71. (207) Pulse 8 Company, Inc., Dallas, Tex. Carpets and furniture | Inbound to Dallas traffic moves from specified points in Georgia, and North and South Carolina between January and July 1960 it examined shipments from Calhoun, Dalton, Rogers, and Knoxville, Ga.; Goldsboro, and West Jefferson, N.C.; Nashville, Tenn.; and Dolan, Ala. | During the aforementioned 7-month period, [illegible] noted most of the listed Georgia shipments. Georgia Highway, Ryder, and ETSINC originated a few of the listed Georgia movements. N.C. interlines with Mercury at Birmingham, Ala. Thornton interlined with Red Ball at Memphis on a movement from North Carolina. Cole interlined with Red Ball and East Texas on three shipments from Nashville, Tenn. Dolphus interlined with Transcon on a movement from West Jefferson, N.C. Also some private carriage. | Transit time important on some [illegible] study, mostly on shipments from Georgia points indicates transit time of 3 to 10 days with most shipments taking 5 to 6 days. | Herrin, Johnson, and [illegible] |
| 72. (208) Harry Davis of Dallas, Inc., Dallas, Tex. Inbound - unfinished piece goods and materials used in the manufacture of bins, from Gastonia, Cherryville, and Lincolnton, North Carolina. Outbound - finished piece goods and materials used in the manufacture of bins from Gastonia, Cherryville, and Lincolnton, North Carolina, to Dallas, Tex. | Inbound shipments from Charlotte, N.C., Greensboro and Randhill, S.C., Lincoln, Ga., and Danville, Va., to Dallas, Tex. 3 to 5 TL a week. Outbound LTL shipments from Dallas and Breckenridge, Tex., to points in Arkansas, North Carolina, Georgia, Maryland, Florida, Virginia, South Carolina, and Northeastern States. | Inbound carriers are Transcon, Georgia, Strickland, Roadway (joint-line with various originating carriers). Outbound carriers are Jones to Arkansas, Roadway to Carolinas, Transcon and Roadway to Georgia, Mercury to Florida, Roadway, Strickland, and Yellow Transit to Maryland, Virginia, and Northeast Breckenridge traffic transported to Dallas by Merchants Fast Motor Lines. | Time to transit important on inbound shipments in order to get piece goods into production. Desires 2-day service from Carolinas to Dallas | Herrin, Johnson, and Jones. |
| 73. (209) Crandall Corporation, Inc., Dallas, Tex. Drugs and medicines | Inbound to Dallas shipper receives a total of about 300,000 pounds a month, all in TL lots from Kennerton, N.J., and Milford, Bridgeport, Conn. | Railed, Piggyback Flex service, and Johnson to New Orleans, La., thence Red Ball to Dallas | Shipper requires protective service on about 5 to 8 percent of its traffic both during the summer and winter months. | Herrin and Johnson. |
| 74. (210) American Screen Manufacturing Company, Dallas, Tex. Screens, windows and parts and curtain rolls | From Dallas shipments move three or four times each week to Birmingham and Mobile, Ala.; Jackson, Miss., and Atlanta, Ga. Shipments range in size from 100 pounds to 1,000 pounds. Inbound shipments of steel from Shreveport, La., to Dallas, Tex. | Gardner, Red Ball, Herrin, and Transcon. Herrin is used inbound. | Time is transit important to meet contractor deadlines. Desires 2 or 3-day service. Complains of delayed pickups by existing carriers. | Herrin. Herrin's inbound service considered very satisfactory |
| 75. (211) Columbia Screens Company, Dallas, Tex. Phonograph records and photographs | From Dallas shipper has daily movements to Jackson, Miss., and Mobile, Ala., the shipments weigh between 50 and 500 pounds. | Red Ball, Gardner, and Brownell. | Need for expedited transportation to get records on market during short period of gift demand. Wants overnight service to Mobile. | Herrin. |
| 76. (212) Hudson Air Conditioning Company, Dallas, Tex. Air conditioning units and parts. | From Dallas shipper has daily movements weighing from 100 to 1,000 pounds to Birmingham, Mobile and Montgomery, Ala., and Memphis and Columbus, Ga., and Jackson, Miss. | Gardner, Mercury, and Red Ball. | Wants expedited service particularly on repair parts. | Herrin. |
| 77. (213) Swanson, Tex. | One shipper under Georgia heading | | | |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] Tex. Rubber [illegible] Plastic [illegible] Machinery parts | Inbound to Dallas from Atlanta, Ga., between 5/10/61 and 7/8/61 shipper received four shipments weighing 837 pounds. It also received traffic from Greenville, S. C., Charlotte, N. C., and Monticello and West Point, Ga. | Red Ball as the delivering carrier Wright carriers are Ryder and Jones, Lanford, and Roadway are used as delivering carriers. | Transit time is important because if machinery parts are not received shipper's manufacturing operation is shut down. Shipper prefers single-line service because of the transit time and tracing factors. Wants 3-day delivery from Atlanta. | Red Ball. |
| [illegible] Texas Tag and Specialty Company, Wolfe City, Tex. Paper, metal, and cotton tags and printed items | From Wolfe City each month shipper moves about 1,000 pounds to Atlanta, Ga., and 1,000 pounds to Birmingham, Ala. Additionally it ships about 1,000 pounds a month to points in North and South Carolina, Georgia, and Alabama. Occasionally it has a shipment to Greenville, Miss. The shipments weigh from a minimum of 1 pound to a maximum of 3,170 pounds. | Red Ba... originates all of shipper's outbound traffic. The connecting carriers are either decided by Red Ba... or Transcon is specified. | Wants single-line service because customers, particularly from Eastern States, have complained of delays. These delays occur at the interchange point | Red Ball |
| [illegible] Tyler Farm Tyler, Texas Rose bushes | From Tyler to [illegible] Ohio, and Atlanta, Ga. during March 1961 shipper moved 195,478 pounds by Red Ball. While only a total of 2,401 pounds of this amount were destined to the three above named points, an additional amount was shipped to points that normally would be interchanged in Atlanta. | Red Ball, originates [illegible] of shipper's [illegible] outbound traffic. | Shipper wants direct service to the aforementioned points. It indicates that transit time is important because rose bushes are perishable items | Rec. [illegible] |
| [illegible] Company, Dallas, Tex. Aluminum shapes and extrusions | Between Dallas and Atlanta, Ga. Shipper receives inbound at Dallas from Atlanta about 3,000 pounds a month and it ships outbound from Dallas to Atlanta about 2,000 pounds a month. The average shipment weighs 200 pounds and shipments move once or twice a week in each direction. | East Texas. The joint-line services of Roadway, Jordeco, Red Ball are also used. | Shipper uses Red Ball to points in the area it serves from Dallas on a daily basis. It wants to limit the number of carriers it uses and relieve the congestion at its docks. | Red Ball. |
| [illegible] Pearl Pillow Company and Pearl Pad Company, Houston, Tex. Pillows and pads | From Houston shipper has daily movements to Atlanta and Columbus, Ga., Birmingham, Mobile, and Montgomery, Ala., and to other points in Georgia, Mississippi, and Alabama. The shipments weigh between 175 pounds and 2,000 pounds with the average shipment weighing about 425 pounds. Between 6 and 10 shipments move daily. | Herrin is used to points in Georgia, Alabama, Mississippi, and Florida. Inbound shipments are handled by Gardenia and Roadway in joint-line service. | Desires 2nd-morning delivery on inbound shipments from Atlanta. Wants single-line service on outbound shipments because of damage problems | Herrin. |
| [illegible] Texas Refinery Corp., Fort Worth, Tex. Chemicals and petroleum products | From Fort Worth to points in Arkansas, Mississippi, and Louisiana. Shipper has about 500 LTL shipments a month with an average weight between 100 and 2,000 pounds. | Private carriage is used. Southeastern, CTSW, Herrin, Red Ball, Brownell, and T&P Motor Freight, joint-line with interchange at New Orleans. | Wants to abandon a warehouse operation at Columbus, Miss., which was opened as a result of poor service to Mississippi points. | Strickland. |
| [illegible] Division of Combustion Engineering Company, Dallas, Tex. Inbound-materials and supplies for air-conditioning and refrigeration equipment. Outbound-air-conditioning and refrigeration equipment and parts. | Inbound to Dallas, shipper receives anywhere between 1 to 200 movements daily weighing between [illegible] pounds and 90,000 pounds from points in the Midwest, East, and Northeast. Outbound shipments vary in number from 1 to 500 daily and in weight from 1 to 90,000 pounds, and move to destinations throughout the United States and foreign countries. | Red Ball, East Texas, Transcon, Herrin, Gardenia, Strickland, Air Lines, Nat Lines, and RLS | Wants overnight service from Jackson, Miss., to Dallas. Has had difficulties with pick up service of existing carriers. Transit study of 31 shipments from Jackson to Dallas, handled by Red Ball indicates average transit time of 2 to 3 days, with 8 shipments taking 4 or more days. | Strickland. |
| [illegible] & C. Motor Company of Missouri, Kirksey, Tex. Loading machines | From Kirksey shipper moves between 90 and 100 shipments a month with an average weight of 700 pounds a shipment to Magnolia, El Dorado, Crossett and Camden, Ark. | Joint-line service with interchange at Dallas and Central on the origin carrier | Desires next-day service to southern Arkansas | Strickland. |
| 84. (218) Fast-Guard Products, Inc., Dallas, Tex. Plastic and paper shelf lining, and insecticide | From Dallas to Tampa and Miami, Fla. During August 1960 approximately 7,500 pounds were shipped to Tampa. The tonnage to Miami is approximately the same. Shipper expected to double its traffic to Tampa and Miami by 1971. | Mercury, Red Ball, Herrin, and Transcon originate shipper's traffic. | Shipper lost the Penal Fair account in Miami due to slow transportation service. It wants consistent 5-day service to Miami and desires consistent service so that it does not have to maintain a warehouse in Miami. | Brennan. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 87. (1949) Tom A. Ring Company, Inc., Garland, Tex. Louvered products, bi fold doors, interior and exterior shutters, and interior doors | Shipper operates a warehouse at Charlotte, N.C. and is opening one at Atlanta, Ga. Shipments are from Garland, Tex., to these warehouses and also directly to customers located throughout the Southeast, as well as other parts of the United States. An additional warehouse operation is planned for Fort Lauderdale, Fla. | Roadway and ETMF are originating carriers. | Transit time is important because shipper has a great deal of competition in the Southeast. It wants 2-day service to points in North Carolina, South Carolina, Georgia, and Florida. | Johnson and Bowman. |
| 88. (1950) Lamex of Dallas, Inc., Dallas, Tex. Fashion and synthetic piece goods | Inbound to Dallas shipper receives movements from points in North and South Carolina. Between January and August 1950 shipper received deliveries of movements from Kings Mountain, Paw Creek, Morganton, Henderson, Tuffin, Biltmore, Old Fort, Greensboro, and Sugar City, N.C., and North Charleston, Morganton, Blacksburg, Rock Hill, Carlisle, Texas, and Trenton Heat, S.C. | Roadway to single-line service. Occasionally Thornton interlining with East Texas, Huckabee, Interlining with East Texas, overnight interlining with East Texas, McKee interlining with Gordons, and Dixie interlining with Combine are used at the supplier's direction. | Time in transit is important factor in shipper's manufacturing process. Desires single-line service. Needs more consistent service so that production plans can be maintained. Desires overnight service. | Bowman, Johnson, and Jones. |
| 89. (1951) Superior Switchboard & Devices, Division of Chim Metal Manufacturing Co., Paris, Tex. Steel junction boxes | From Paris shipper moves about 10,000 pounds a month to Atlanta, Ga.; 1,000 pounds a month to Birmingham, Ala.; and 1,000 pounds a month to Greenville, Miss. The average weight of each shipment is about 800 pounds. Shipper expected its business to increase 500 percent within a few months of the hearing. Most of the shipments are LTL. | Red Ball, Southern Pacific Transport, Texas & Pacific Motor Transport, Roadway, and Strickland. | Transit time is important to shipper because 75 to 90 percent of its product is sold to contractors and it must deliver within 8 weeks of the order. Many of its customers face penalty clauses for construction delays. Shipper wants direct service to Atlanta by a carrier with terminal facilities in Paris. | Red Ball. |
| 90. (1952) Dresser Manufacturing, Inc. Dallas, Tex. Metal brands | From Dallas to points in Alabama, Arkansas, Georgia, and Florida. Between 9/1/50 and 9/21/50 shipper had movements to Tampa, Miami, Fort Pierce, Lakeland, Orlando, Fort Myers, Gainesville, Jacksonville, Daytona Beach, Oakland Park, Hastings, Pensacola, and Panama City, Fla.; Atlanta, Columbus, Augusta, Rome, Marietta, Macon, Savannah, and Albany, Ga.; and Decatur, Mobile and Anniston, Ala. | Mercury, with one exception, originated all of the described shipments during the aforementioned period. | Shipper expresses a need for the proposed 2-day service to Alabama and Georgia, the proposed 3-day service to Florida, and the proposed overnight service to Arkansas as it produces single-line service in order to facilitate tracing of shipments. | Bowman, Johnson and Jones. Shipper's consignee has the right to require it to discontinue routings if the consignee so desires. |
| 91. (1953) Texarkana, Tex. | Evidence of witness under Arkansas heading. | | | |
| 92. (1954) Houston and Dallas, Tex. | See shipper under Louisiana heading. | | | |
| 93. (1955) A.B.A. Manufacturing Co. Inc., Grand Prairie, Tex. Automobile air conditioners | From Grand Prairie to points in Mississippi, including Jackson, to points in Alabama, including Birmingham, Mobile, and Montgomery, and to Atlanta, Ga. | Red Ball, East Texas, and Transcon. | Shipper needs a consistent service to meet construction schedules. It desires second morning service to Atlanta on LTL shipments and first afternoon new truckload. Desires first morning to Birmingham on TL and first afternoon on LTL. Transit time important (Most many customers tend to be "impulse buyers". | Herrin and Red Ball. |
| 94. (1956) Reynolds Aluminum Supply Company, Dallas, Tex. Outbound industrial metals and building products (aluminum sheet, rods, and bars) | Inbound to Dallas TL and LTL shipments are received from Listerhill and Birmingham, Ala., Atlanta, Ga. and points north of these gateways. Shipments weigh between 100 and 30,000 pounds. It receives 15 shipments a week inbound from Birmingham and Atlanta. | East Texas, Transcon, Gordons, and Merchant. | Shipper needs consistent service to maintain inventory. It desires second-morning delivery on LTL shipments from Atlanta to Dallas and first-afternoon service on TL. Transit study indications existing service of 4 to 5 days from Atlanta and Birmingham, with a few shipments made in 2 or 3 days and a few others in 7-8 days. | Strickland and Herrin. |
| 95. (1957) Gayoso Industries, Inc., Dallas, Tex. Steel repairing supplies | Inbound to Dallas shipper receives between 1,000 and 10,000 pounds each week from Birmingham, Mobile and Montgomery, Ala., and from Atlanta, Ga. | Mercury, Transcon, and Roadway. | Shipper allows 6 to 7 day lead time on shipments from Atlanta, Montgomery, and Birmingham, and 5 to 6 days from Mobile. It desires second-morning delivery on LTL shipments from Atlanta, first-afternoon service from Birmingham, and Montgomery and first-morning service from Mobile. Transit times important since inbound parts are purchased from the government for cash, and this cash remains tied up until the ultimate sale is made to shipper's customers. | Herrin. |
| 96. (1958) Shaw-Walker Company, Dallas, Tex. Metal office furniture | Inbound to Dallas shipper receives about 3 shipments a month from Atlanta, Ga., weighing between 150 pounds and 2,500 pounds. Outbound shipper makes supply shipments from Dallas to Houston, Jackson, Waco, and Birmingham, Ala., weighing between 150 pounds and 2,500 pounds. | Herrin is used on an interline basis on outbound shipments and East Texas on inbound movements. | Single-line service is desired. Shipper wants second-morning service from Atlanta on LTL shipments and first-afternoon service from Birmingham. Using optimum to joint-line service transit times are about 4 days. | Herrin. |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 97. (1959) Tempo Decorative Fabrics, Inc., Dallas, Tex. Inbound cotton and synthetic fiber fabrics and piece goods. Outbound drapery and curtain fabrics. | Inbound shipments are received at Dallas from Atlanta and Flintstone, Ga.; Sumter, Travelers Rest, and Clearwater, S.C.; Rocky Mount, Shelby, and Rutherfordton, N.C.; and Emporia, Va. The inbound shipments are received daily and weigh between 100 and 5,000 pounds. Outbound shipments are made to points in Louisiana, Texas, Mississippi, including Jackson, and Arkansas. These shipments also weigh between 100 pounds and 5,000 pounds. | East Texas, Roadway, Transcon, T.I.M.E., Strickland, Herrin, Red Ball, and Brunswick. | Transit study shows 2- to 5-day service from Atlanta by ETMF. Service from Carolinas ranges from 4 to 7 days. Texas times are normally weekends. | Herrin. |
| 98. (1960) Superior Switchboard & Devices, Division of Chim Metal Manufacturing Co., Paris, Tex. Steel junction boxes | From Paris shipper moves about 10,000 pounds a month to Atlanta, Ga.; 1,000 pounds a month to Birmingham, Ala.; and 1,000 pounds a month to Greenville, Miss. The average weight of each shipment is about 800 pounds. Shipper expected its business to increase 500 percent within a few months of the hearing. Most of the shipments are LTL. | Red Ball, Southern Pacific Transport, Texas & Pacific Motor Transport, Roadway, and Strickland. | Transit time is important to shipper because 75 to 90 percent of its product is sold to contractors and it must deliver within 8 weeks of the order. Many of its customers face penalty clauses for construction delays. Shipper wants direct service to Atlanta by a carrier with terminal facilities in Paris. | Red Ball. |
| 99. (1961) Higginbotham-Bailey Co., Dallas, Tex. Textile products | Inbound to its Dallas warehouse shipper receives traffic from points in North and South Carolina, Alabama, and Georgia weighing about 100,000 pounds a month with the average shipment weighing between 200 pounds and 600 pounds. Additionally many shipments are made direct from points in the above-described states to points in Louisiana, Arkansas, and Texas. During July and August 1949, 22 shipments weighing 2,457 pounds were made to Louisiana, 18 shipments weighing 1,681 pounds were made to Arkansas, and 9 shipments weighing 1,122 pounds were made to Texas. Representative destination points are: Lena, Haynesville, Homer, Mansfield, Dubach, Jonesville, Ringgold, Port Allen, Baton Rouge, Morgan City, and Centerport, La.; Hamburg, Huntsville, and Nacogdoches, Tex.; and Joffin, Lake Augustine, Port Arthur, Cooper, and Jacksonville, Tex. Shipments are almost always LTL. | Inco Atlanta shipper uses Brunson, Dodie, and Overnight. From Atlanta it uses Carbonex, T.I.M.E., Thompson, Lear, Texas, and others. | Shipper desires better service between Dallas and Atlanta, so that overall transit times from textile mills in Carolinas and Georgia to Dallas, and shipments from Dallas to points in Louisiana through Atlanta can be reduced. | Bowman, Johnson and Red Ball. |
| 100. (1962) Wilmot, Inc. Nacogdoches, Tex., Bronze valves | From Nacogdoches shipper has traffic moving to Atlanta, Ga., and occasionally to Greenville, Miss. and Birmingham, Ala. It averages about 4,000 pounds to 5,000 pounds weekly to Atlanta. It also ships to Roanoke, Va. (about 5,000 pounds a week), Charlotte, N.C. (about 4,000 pounds a week), and Pinellas Park, Fla. (about 4,500 pounds a week). | Red Ball originates all of shipper's outbound traffic. To Atlanta it interlines with Ryder or East Texas. To Charlotte it interlines with Ryder to Roanoke. It interlines with Ryder or Roanoke & Dixon, to Pinellas Park it interlines with Ryder. | Shipper wants single line service to Atlanta in order to reduce transit times and facilitate tracing on shipments dropped off at points between Nacogdoches and Atlanta. | Red Ball. Although Red Ball does not propose a single-line service to Roanoke, Charlotte, or Pinellas Park, shipper wants a greater selection of delivering carriers over the Atlanta gateway. |
| 101. (1963) Delta Quality Products Company, Dallas, Tex. Steel tubing and belt and screw assemblies. | From Dallas to Birmingham, Ala., Atlanta, Ga., Jackson, Miss., Texas points in North and South Carolina, and points in Georgia. Shipper has between 5 and 8 movements a month, which weigh between 200 and 400 pounds each. | Lonestar, Transcon, Mercury, Roadway, and Red Ball. | Shipper has experienced a growth in business and needs additional shipments to points in Georgia and Alabama. | Strickland. |
| 102. (1964) John Kellam Company, Dallas, Tex. Outbound and receiving material | From Trenton, N.J., and Baltimore, Md., to Dallas. Shipper receives two or three shipments a month from Trenton weighing from 1,000 to 5,000 pounds. Shipper is not receiving anything from Baltimore, Md., now, but expects to receive four or five shipments a month. | Roadway, Spector, and ETMF. | Wants faster service. Wants single-line service. Shipper wants 3- or 4-day service from New Jersey. | Johnson and Bowman. Several existing carriers have not been cited. |
| 103. (1965) Gayoso Industries, Inc., Dallas, Tex. Steel repairing supplies | From Texarkana, Ark., Chattanooga, Tenn., Baltimore, Md., and Philadelphia, Pa., to Dallas. For the year 1949 and a portion of 1950 shipper received 34 shipments. Average weight 800 pounds. | Roadway, Cole, Bowman, ETMF, Acme, Republic, Universal, Red Ball, ETMF, and Strickland. | Wants faster single-line service. Transit time from Atlanta goes up to 7 days, 6 days from Chattanooga, and up to 10 days from Baltimore. All times include weekends. Wants proposed 2-day service from Atlanta and Chattanooga and 3-day service from Baltimore. | Bowman, Johnson, and Jones. |
| 104. (1966) Fresno-Rite Products, Dallas, Tex. Frozen bakery items. | From Dallas to points in Georgia, Virginia, Alabama, and North and South Carolina. Ships approximately one or two TL to the above areas a week. | FFE, Refrigerated Trans., and Frigis Food. | Needs reliable refrigerated service. Difficult to obtain adequate equipment. Wants Jones on, Bowman or Lear once a week for service to Atlanta and Birmingham and Johnson and Bowman single-line service to Georgia and Virginia. | Johnson, Bowman and Jones. Most carriers would provide refrigerated service but LTL refrigerated service to Birmingham. Requires refrigerated equipment. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 108. (1959) Rockwood Sales Co., Dallas, Tex. Wood rubber. | From Dallas to points in Alabama, New York, Pennsylvania, Florida, Tennessee, Maryland, Georgia, New Jersey, and North and South Carolina. From 6/1/56 to 6/30/56 shipper transported 45 shipments to above States. Average weight was about 400 pounds. | Mercury, Gordons, Transamerican, Transway, Transcon, Old Continent, and Red Ball. | Wants faster single-line service. Wants 1- or 2-day faster service. | Bowman, Johnson, Jones, and Strickland. |
| 109. (1960) Sherrod, Inc., Dallas, Tex. Carpet rolls. | From Thomaston and Cartersville, Ga., to Dallas. Receives 50,000 pounds each month from above points. From Dallas to El Dorado, Ark. Ships four or five times a month. Average weight 250 to 400 pounds. | Red Ball, Mercury, ETSY, Transcon, Roadway, T.I.M.E., Control, MLA, and Baggett. | Wants faster service. Delay can cause loss of sales. Between 5- and 7-day transit time is shown on movements from Northwest Georgia points. Damage is from 3 to 14 days including weekends. Wants 2-day service from Cartersville. | Bowman and Jones. |
| 107. (1961) Carolina, Inc., Dallas, Tex. Retail items. | From New England, and the Middle Atlantic States to Dallas. From January 1961 thru June 1961 shipper received 73 shipments with an average weight being 400 pounds. | Roadway, Burns, Roberts, Hampshire, Fullmer, Brunch, Keystone, Ward, Green, Old Colony, Motor, Morse, and Merry. | Wants single-line service which something is faster and more consistent. Wants 4-day service from New England points and 3-day service from Mid-Atlantic points. Average transit time is now between 6 and 7 days including weekends, on shipments from points in this area. | Bowman and Johnson. Several existing carriers can provide single-line service |
| 106. (1962) Williamson Brands, Mfg. Co., Fort Worth, Tex. Clothing. | From Fort Worth, Tex. to points in Alabama, Florida, and Georgia. From 5/1/60 to 5/31/60 shipper transported in excess of 100 shipments with an average weight of 100 pounds. | Mercury and Red Ball | Wants better service. Allows 7 to 10 days to points in Alabama and Georgia and up to 13 days to points in Florida. Wants third- or fourth-day delivery as proposed by applicants. | Bowman, Johnson, and Jones. Shipper stated that Red Ball is a reliable and dependable carrier. Existing service is satisfactory |
| 105. (1963) Fort Worth Carpet Co., Fort Worth, Tex. Carpets. | From Dalton and Cartersville, Ga., and Chattanooga, Tenn., to Fort Worth. Receives 30,000 pounds a month from Dalton and occasional shipments from Chattanooga. | Roadway, Baggett, United, Gordons, Ryder, Bowman, Mercury, Control, ETSY, Smyrna, Red Ball, and SAT. | Wants faster transit time. Wants 2- or 3-day service as proposed. | Bowman. Shipper admits that he is not fully acquainted with carriers existing authority to originate shipments at Cartersville, Ga. |
| 110. (1964) Crown Machine and Tool Company, Arlington, Tex. Plastic items. | From Arlington, Tex., to points in Alabama, Florida, Georgia, Arkansas, and North and South Carolina. From 6/1/60 to 8/30/60 shipper transported almost 150 LTL shipments, average weight was about 150 pounds. | Morris, Roadway, Red Ball, Transcon, ETSY, Strickland, and SAT. | Wants consistent and better transit time. Has had numerous customer complaints resulting in shipping delays. Allows 4- or 5-days for Birmingham and Atlanta shipments. Other points in Georgia require one more day. Generally allows 5 or 6 days to Carolinas and Florida. Wants single-line service. | Jones, Bowman, and Johnson. Shipper was unaware of the fact that Morris can perform a single-line service to several points. Shipper has many existing carriers available to it. |
| 111. (1965) Woody's, Fort Worth, Tex. Seasonal dry goods. | From points in Georgia, North Carolina, South Carolina, Tennessee, and Virginia to Fort Worth. Receives 100,000 pounds a month from the above States. In June 1960 shipper received 90 shipments. | ETSINC, Gordons, Pulaski, Overnite, Thornton, Carolina Cavalry, Bowman, Cole, Brownell, ETSY, Eastern, Roadway, SCT, Fullmer, Fugitive, Harper, Standard, Piedmont, Victor, Orton, GSD, Hartsell, Transcon, and Georgia Highway Strickland, Mercury, MLA, Springerlee, Roadway, and Red Ball. | Existing transportation services are inconvenient. Needs faster service to meet the demands of advertised sales. Most shipments are delivered between 4 and 6 days in loading commands. Wants consistent 3-day service from all points. | Johnson and Bowman. |
| 113. (1966) Hanna Division Brunswick Corporation, Dallas, Tex. Fiberglass and aluminum furniture. | From Dallas and Hewitt, Tex., to points along the eastern seaboard. Ships about 10 LTL shipments a day to all 50 States. Average weight is 200 to 300 pounds (LTL). From 2/15/60 to 8/30/60 shipper had almost 75 shipments to points on the eastern seaboard. | Transcon, Strickland, Mercury, MLA, Springerlee, Roadway, and Red Ball. | Transit time too slow. Shipper allows 7 days from Dallas and Houston to points in Florida, the Carolinas, and Georgia. It wants faster service. | Johnson, Bowman, and Jones. |
| 112. (1967) Gulf Ind. Inc., Dallas, Tex. School furniture. | From Dallas to points in the eastern one-half. From 5/15/60 to 8/30/60 shipper had over 40 shipments to the destination territory. Average weight was pounds. | Consolidated, Strickland, Tolino, Harris, Roadway, Control, Red Ball, and ETSY. | Wants fast delivery in order not to forfeit performance bonds. Allows 7 to 9 days transit time for shipments to Carolinas, Maryland and eastern Pennsylvania. Has received many complaints on late deliveries. Wants single-line service. | Johnson and Bowman. |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 116. (363) Higginbotham Peerless Hardware Co., Dallas, Tex. General hardware | From points on the eastern seaboard to Dallas. From June through August 1960 shipper received about 60 shipments (LTL) weighing an average 150 pounds. | Acme, Midland, Mariposa, Republic, Texas, Universal, MLA, Teiton, Sessions, Consolidated, ABF, and Brown. | Wants faster transit time and prefers single-line service. Average transit time is 7 days including weekends. | Bowman, Johnson, and Jones. Shipper was unaware that Herrin can serve some points directly. |
| 111. (370) La France Industries, Inc. Ind., Dallas, Tex. Piece goods | From North Carolina, South Carolina, Georgia, and New York to Dallas. From Dallas to points in Georgia. Between 7/1/60 and 9/30/60 shipper received 8 shipments from North Carolina totaling 1,111 pounds. Also, during this period it received 19 shipments from South Carolina totaling 2,382 pounds, 10 shipments from Georgia totaling 8,333 pounds, 6 shipments from New York totaling 1,040 pounds. | Transcon, Strickland, and Roadway. | Wants faster and more consistent transit time, including weekends, average transit time is 5 days. | Johnson and Bowman. Service from Atlanta is satisfactory. Shipper does not route all traffic. |
| 114. (371) Brown and Sons Supply Company, Inc., Dallas, Tex. Industrial supplies | From Georgia, South Carolina, and Tennessee to Dallas. Receives two or three shipments a week from Chattanooga, Tenn. (300 to 4,000 pounds). Receives one shipment a month from Wichita, S.C. Receives one shipment a month from Cartersville, Ga. 1,000 pounds (LTL). | CMC, ETSY, MLA, ATL, Overnite, T.I.M.E., Ryder, and TCU. | Wants better transit time in order to not commission FreePort single-line service. Average transit time 9.3 days including weekends. | Strickland, Bowman, and Johnson. Shipper does not route all shipments. |
| 117. (372) Tandy Leather Company, Fort Worth, Tex. Leather goods | From Fort Worth, Tex. to Jackson, Miss. Ships five to eight shipments a month to above-described point. Each LTL shipment weighs about 25 pounds. | Red Ball and Transcon. | Needs faster deliveries because of tight inventory. Allows three to five days for shipments moving to Jackson. Wants overnight service. | Strickland. Transit time is three to four days currently. |
| 119. (373) Marlite Bags & Belts, Inc., Terrell, Tex. Belts and handbags | From Ferris, Tex. to Greenville and Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. | Control and Strickland. | Wants consistent single-line service. | Strickland. No volume figures given. |
| 118. (374) Tennessee Radiator Corp., Fort Worth, Tex. Radiator tubing and cores | From Fort Worth to Atlanta, Ga. Ships 20,000 pounds (3 LTL lots) month to Atlanta (three or four shipments monthly). Ships to Greenville two times a month, about 500 to 600 pounds. | Transcon and Roadway. | Wants to open up sales in Greenville and Jackson, Miss. with Strickland's proposed service. Existing service is inconsistent and too slow. No transit times given. | Strickland. |
| 120. (375) Connally Implement Supply Company, Amarillo, Tex. Plows and parts. | From Atlanta, Ga. to Amarillo 12,000 pounds a month) and occasionally receives 10 pounds from Birmingham, Ala. Also receives 6,000 pounds a month from Huntsville, Ala. | Red Ball, CCX, Transcon, Merchants, Roadway, United, Mercury, and ETSY. | Wants consistent single-line service in order to keep inventory down. Average transit time seven days, including weekends. | Red Ball. |
| 121. (376) Meat Packaging Company, Dallas, Tex. Cardboard boxes. | From Atlanta, Ga. to Dallas. Shipper receives about four million pounds a year. Shipper may require split deliveries in Lakeview Texas and Louisiana towns. | Transcon and ETSY. | Wants extension of additional carriers to supply sufficient equipment. No transit or load times given. | Red Ball. |
| 122. (377) Vassar Products, Inc., Graham, Tex. Structural honeycombs (aluminum article) | From Grafton to Nashville, Ga. (ships two times a month). Cape Kennedy (two times a month) and Orlando, Fla. (two times a month). Each shipment weighs about 100 pounds. | Red Ball. | Wants faster and more consistent deliveries. No times given. | Red Ball. Red Ball is only applying for authority to Nashville, Ga., and will be unable to serve Nashville directly. |
| 123. (378) Taylor Foundry Company, Wichita Falls, Tex. Cast iron tractor castings and pipe fittings. | From Wichita Falls to Greenville, Miss. Ships 100,000 pounds a year (five TL a year). Also receives occasional shipments from Birmingham, Ala. | Red Ball, Viking, Campbell, and Jones. | Wants single-line service because shipper has lost items on interchange. | Red Ball. There is nothing in the record to show that existing service is uncertificated. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| (No. (879) George E. Anderson, Company, Dallas, Tex. Electrical supplies | Dallas to Jackson, Miss. Shipper has about twenty shipments a month, with weights ranging from thirty to 5,000 pounds | Red Ball and Jones | Has had poor pickup service. Wants overnight single-line service. | Strickland. Shipper does not route all of inbound |
| 155. (900) Home Interiors & Gifts, Inc., Dallas, Tex. Merchandise | From Dallas to points in Georgia. Shipper ships about 30 shipments a month. Average weight is 100 pounds. | Roadway | Wants better service. Lost business due to damaged shipments. No transit or load times given. | Strickland. Strickland could ship cargo Atlanta, Ga. Shipments could be interchanged at Atlanta. Red Ball. |
| 156. (901) Xerox Corp., Arlington, Tex. Office machines | From Arlington to Greenville, Miss. Ships two to three shipments a week. Average weight is 95 pounds. From Atlanta, Ga., to Arlington. Shipper receives 5 to 10 shipments a month. Average weight 300 to 500 pounds. | Red Ball, ETMT, and Gordons | Wants single-line service and an expedited service. No transit or load times given. | Red Ball. |
| 157. (902) Magnolia Brush Mfrs., Inc., Clarksville, Tex. Brushes | From Clarksville to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss. Outbound shipments average 5,000 pounds a month. Between 1 and 10 shipments a week move to Atlanta. To Birmingham five shipments move a month, and there are occasional shipments move to Greenville. | Red Ball. | Wants consistent single-line service. Has difficulty in tracing with joint-line service. Wants faster transit time. Transit and load times are not given. | Red Ball |
| 158. (903) U.S. Brass Corp., Plano, Tex. Brass and steel fittings | From Plano to points in Mississippi, Alabama, and Georgia. Shipper has from 1 to 15 shipments a day to points in the above States. Each shipment weights from 30 to 3,500 pounds. | Strickland, Red Ball, Complete, Ryder, Bowman, Cantrell, Mercury, Transcon, and Jordan. | Wants quicker service. Red Ball no longer picks up. No transit or load times given. | Strickland |
| 159. (904) Anchor Gasket Company, Dallas, Tex. Paper/rubber gaskets | From Dallas to points in Mississippi. Ships one LTL shipment a week to points in Mississippi. Each shipment weighs between 50 and 200 pounds. | Red Ball. West Brom., and Morris. | Wants faster reliable service because some supplies are perishable. Received customer complaints about excessive transit time. Wants proposed overnight service to Jackson. No transit or load times given. | Morris. No evidence of manufacturing existing service was presented. |
| 160. (905) G. C. Grimble Co. Houston, Tex., Steel fabricating | Inbound to Houston from Jackson, Miss. In September 1966 shipped 90,000 pounds from Jackson to Houston. In August 1966 30,000 pounds was shipped to Houston from Jackson. | Red Ball. West Brom., and Morris. | Wants overnight service from Jackson. | Morris. Red Ball offers direct service to Houston and there is no evidence that their service is inadequate to meet shipper's demands. |
| 161. (906) Texas Manufacturing Variety, Inc., Dallas, Tex. General merchandise | From points in North Carolina and Atlanta, Ga. to Dallas. Shipments are received weekly. Each shipment weighs about 750 pounds. | ETMT, Transcon, and Strickland. | Wants fast transit time from Carolinas. Wants second morning service from Atlanta to Dallas. | Morris. Shipper states he is dissatisfied with existing service, but presented no evidence of poor service. |
| 162. (907) Purex Longhorn Company, Dallas, Tex. Leather | From Chattanooga and Oxford, Tenn., to Dallas. Receives 6 shipments from 1/14/66 to 7/18/66 with an average weight of about 3,500 pounds. | Jordan and ETMT. | Wants Jordan to have single-line service from faster transit time, average transit time is four days, including weekends. Needs two-day service from Chattanooga and Oxford. | Jordan. |
| 163. (908) Carter & Company, Dallas, Tex. Hardware | From Dallas to points in Mississippi. Plans to ship 7,000 pounds a month to Greenville, Miss. | Red Ball, ETMT, Roadway, Ryder, Cole, and Jones. | Wants consistent transit time and single-line service. | Red Ball. Jones offers single-line service from Dallas to Greenville, Seagull services other single-line carriers to terminal points. |
| 164. (909) Pinnell Welded Wire Products Company, Inc., Dallas, Tex. Display racks | From Dallas to points in South Carolina, Florida, Georgia, Alabama, North Carolina, Virginia, New York, Pennsylvania, Maryland, Tennessee, and Kentucky. Ships to [illegible] from May 1966 through September 1966 shipper had in excess of 50 shipments with an average weight of 300 pounds. | Morris, Roadway, Red Ball, and Strickland. | Wants faster transit time allowing 7 to 10 days load time to Florida and New York, 5 days to points in Alabama, Georgia, Virginia and the Carolinas. Wants 2-day service to Alabama and Georgia, 3-day service to Florida, and the Carolinas, and 5-day service to New York. | Johnson, Seaman, and Jones. There are several interlining combinations available which shipper has not used. |







Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 139. (898) J. W. Davis & Co., Dallas, Tex. Sound equipment | From Dallas to points on the eastern seaboard. From 8/1/66 through 8/30/66 shipper transported in excess of 80 shipments to seven areas. Average weight was 50 pounds | MLA, R-B, Herrin, Roadway, Consolidated, Gordons, Herrin, and ETMT | Wants faster more reliable service. Allows a load time of one week on shipments for Florida. Needs 3-to 4-day service to points in Florida. | Seaman. Johnson, and Jones. Shipper does not route all shipments. |
| 140. (899) Fowler, Inc., Dallas, Tex. Co-Products | From Dallas to points in Florida. From 6/1/66 through 9/30/66 shipper had 6 shipments to Florida with an average weight of 200 pounds | Roadway, Central, Herrin, and Mercury | Shipper wants single-line service. Needs 3- to 5-day service to points in Florida. Presently allowing a load time of 5 to 6 days | Seaman. No proof that existing service is inadequate. |
| 141. (900) Byrnes Distributing Inc., Dallas, Tex. Air coolers and heaters. | From Troy, Pa., to Dallas. Receives 20,000 pounds a month by motor carrier with an average weight of 150 pounds. | Jonesboro, Consolidated, Acme, and Roadway | Shipper wants 5-day service. Average transit time 7.2 days needs 5-day service from Troy to Dallas. | Johnson. Shipper wants to use motor carrier in place of TOFC service. |
| 142. (901) Jones of Dallas Manufacturing, Inc., Dallas, Tex. Piece goods | From Dallas to points in Georgia, Tennessee, Alabama, Florida, South Carolina, Paterson, N.J., and New York, N.Y. From [illegible] to [illegible] shipper had 10 shipments. No weights given. From points in States on the eastern seaboard to Dallas, Tex. From 12/28/65 to 7/27/66 shipper received in excess of 75 shipments Average weight was 500 pounds | Roadway, Gordons, Red Ball, ETMT, Brasswell, Herrin, R.C.M., Jonesville, Beasley, Strickland, Transcon, Amara, Mornington, and Catawba | Wants better service with a minimum amount of delays. Average transit time 5 to 6 days, including weekends. Wants 2- to 3-day service from Georgia, North and South Carolina and Alabama. Allows one week load time to points in the destination territory, except New Jersey and New York. | Brasswell, Johnson, and Jones. |
| 143. (902) Fortune Designs, Inc., Dallas, Tex. Hearing apparel | From points in Massachusetts, New Jersey, Pennsylvania, North Carolina, South Carolina and New York, N.Y. to dallas Receives 2,000 [illegible] shipment weighs 750 to 1,000 pounds. Will soon commence to have shipments inbound to points on the eastern seaboard | Acme, Strickland, Trans Am, Pelican Consolidated, Roadway, and The Shippers Assn. | Wants faster transit time so as to realize inventory cut 7 or 8 days from eastern seaboard points, and 5 to 6 days from Charlotte and the Carolinas. Needs 2- to 3-day service from Carolinas, 3-day service from New York, and 4-day service from New England points. | Johnson and Seaman. Shipper has not used motor common carrier service for 4 years. Has not tried existing service. Uses a shippers association. |
| 144. (903) Leaf Bros. Dry Goods Co., Houston, Tex. Dry goods and notions | From points on the eastern seaboard to Houston. From December 1965 to April 1966 shipper received about 200 shipments with an average weight of about 400 pounds | Roadway, Strickland, Georgia Highway, Brooks, Ryder, Acme, I & W, Bell, W. L., Pike, Cross, Harper, Thurston, Strickland, Dependable, T.I.M.E., FCT, ETMT, and others. | Existing service is poor. Average transit time is 9 to 7 days. Needs 3-day service from Georgia and Alabama points. 2-day service from Carolinas and 4-day service from New York | Johnson and Seaman. Shipper does not route all traffic. Shipper knows that some carriers can provide single-line service from many points |
| 145. (904) (a) Southwest Towel & Linen Co., Dallas, Tex. Towels and linen. (b) Associated Motor Products, Dallas, Tex. Electric golf carts. | From Kannapolis (receives 1,000 pounds a month) and Charlotte, N.C. (500 pounds a month) to Dallas | ETMT, Gordons, Roadway, Central, Ryder, Ben Dixie, Fredericksburg, and Seaboard. | Wants faster service as it does not have to maintain a large inventory. Average transit time is 6 days, including weekends. Wants proposed 2-day service from Carolinas to Dallas. | Johnson and Seaman. Seaman and Johnson presently interlining with ETMT provides good service. |
| 146. (905) Vaughan of Texas, Dallas, Tex. Liquid lacquers, adhesive and dry paints. | From Hicksville (receives 30,000 pounds a month) and White Plains, N.Y. (receives 40,000 pounds a month) to Dallas | STC - 10, Cotton, Acme, Tex-Pac, and STC | Wants faster transit time. Needs 4-day service from New York. | Seaman and Johnson. |
| 147. (906) Tampa Decorative Fabrics, Dallas, Tex. Piece goods | From points on the eastern seaboard to Dallas. From August to September, 1966 shipper received about 75 shipments with an average weight of 300 pounds. Shipper states that he receives normally about 60-70 shipments a month. | Seaman, Strickland, Roadway, Arley, G & F, ETMT, Holman, Spector, Midwest, Dromite, Acme, Empire, JBL, Trans Am, T.I.M.E, Ryder, Central, MDL, Mercury, Consolidated, Gordons, and Lee Way. | Wants faster transit times to take advantage of 10-day payment discounts. Prefers single-line service. Average transit time 5 to 6 days, including weekends. Needs 2-day service from Atlanta and the Carolinas, and 3- to 4-day service from eastern points. Average transit time by Roadway was 5.7 days, including weekends. | Johnson, Seaman, and Jones. Shipper has the right to specify carriers but generally lets its suppliers pick a carrier. Shipper is unaware that Ryder can serve Houston. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported or protested |
|---|---|---|---|---|
| 146. (488) Argus Camera Company, Dallas, Tex. Cameras | From Dallas to Mobile and Birmingham, Ala., Jackson, Miss., and Atlanta, Ga. Shipments are made weekly to these points weighing between 100 and 2,000 pounds with an average weight of 200 pounds. | Red Ball, Mercer, Cannonville, and Tennessee. | Wants faster single-line service. Wants 2-day service from Dallas to Atlanta. | Harris. No evidence in record to show that existing service is inadequate. |
| 148. (483) Williams Foods, Inc., Houston, Tex. Cattle feed and paper bags. | From points in Georgia and Alabama, to its facilities at Houston and Baytown and Gibsonville, La. Shipments from Atlanta weigh from 700 to 7,000 pounds, average 17% shipment weight 2,500 pounds | Bowman, Harris, and Hunt. | Wants faster single-line service allowing 3 to 4 days load time from Atlanta to Houston and 5 to 7 days from Atlanta and Mobile to its Louisiana plants. | Harris. No evidence in record to show existing service is poor. |
| 149. (413) Goldcoaster Corporation and Colony House, Inc., Dallas, Tex. Cookware | From Dallas to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, New York, North and South Carolina, Pennsylvania, Rhode Island, Tennessee, and Virginia. During August 1966 shipper had in excess of 200 shipments to points in the above-described States. Average weight was 300 pounds. | Mercury, Red Ball, Transcontinental, ATSF, Harris, Roadway, Spring, Cano., Lee Way, and West. | Time factor delays. Service varies, allowing a load time of one week to Middle Atlantic States and 3 to 4 weeks to New England States. Wants single-line service. | Johnson, Bowman, and Jones. Existing service appears to be adequate. |
| 147. (416) Prescott Factory Co., Dallas, Tex. Sheeting | From McAdoo, Charlotte, and Burlington, N.C., to points in Louisiana and Texas. Shipper maintains a warehouse at Dallas. Receives weekly shipments ranging between 20 and 40 pounds. | Roadway, Transcon, and ATSF. | Wants 4- or 5-day service. Present service takes between 4 and 10 days. | Herrin. |
| 148. (417) Prudential Automobile Insurance, Inc., Amarillo, Tex. Grocery items, toilet preparations, and tags. | From Atlanta, Ga., and points in North Carolina, South Carolina, and Florida, to Amarillo. (Usually and bi-weekly shipments). | Roadway and Transcon. in single-line service. Brynbarth, Texas Oklahoma, and ICX | Wants faster service. Present average transit time 8 days, including weekends. | Red Ball. Transit time does not include all shipments during period. Specific volume not given. |
| 149. (418) Shatterproof Manufacturing Co., Dallas, Tex. Shower's clothing and curtain and synthetic cloth and piece goods. | From North Carolina and South Carolina, to Dallas. From Dallas to Jackson, Miss., Birmingham, Montgomery, and Mobile, Ala., Atlanta, and Columbus, Ga. Inbound - weekly shipments range between 100 and 1,000 pounds. Outbound - daily shipments range between 50 and 1,000 pounds. | Red Ball, East Texas, Roadway, and Cardinal. | Wants faster service. Must now allow at least 10 days load time. Having problems with pickups. | Harris. |
| 150. (419) Bedell's Sportswear Company, Dallas, Tex. Printed goods | From Atlanta, Ga., to Dallas. From Dallas to Jackson, Miss., and Birmingham, Montgomery, and Mobile, Ala. Inbound - weekly shipments varies not given. Outbound - daily shipments range between 100 and 500 pounds. | Cardinal, Roadway, and Red Ball. | Wants second-morning service. Must now give 5 to 10 days load time. | Harris. |
| 151. (420) Dresser Motor Corp., Fort Worth, Tex. Auto parts | From Fort Worth to points in Florida, Georgia, Alabama, Virginia, New Jersey, New York, North Carolina, South Carolina and the District of Columbia. Sixty-eight shipments moved during June, July, and August 1966 ranging between 10 pounds and 1,001 pounds. | Mercury, Merner, Hutchland, Fast Texas, Consolidated, and Harris. | Wants 2-day service to Alabama and Georgia; 3 or 4-day service to Florida 3-day service to the Carolinas, and 4 day service to other points. Present transit time ranges between 4 and 6 days. | Bowman, Johnson, and Jones |
| 152. (421) Gen 64 ore Company, Inc., Dallas, Tex. Copper | From Globe, Ga., to Dallas. Ten 55 shipments weekly ranging between 30,000 and 40,000 pounds. | Mill, Gardner, and East Texas. | Wants 2-day service. Must now allow 3 weeks load time for delivery. | Johnson and Bowman. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reason for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 153. (420) Vera Lee Garment Co., Fort Worth, Tex. Piece goods and clothing | From Fort Worth to points in Alabama, Florida, Georgia, North Carolina, and South Carolina. Thirteen shipments were made during the month of July 1966 ranging between 25 pounds and 37½ pounds. | Roadway, Transcon, Georgia Highway, Rec ho..., Point, Cardinal, Reliant, Mercury, Baggett, Rec ...ne, RIA, and Force; Fast | Wants 2-day service to Georgia, Alabama and North Florida; 3-day service to the Carolinas, and 4-day service to South Florida. Present service to Alabama, Georgia and North Florida take 25 hours. Problems with delays, damages and generally poor service. | Bowman and Johnson. |
| 154. (421) Dickson Jeanswear Manufacturing Co., Fort Worth, Tex. Clothing | From points in South Carolina, Delaware, Virginia, Tennessee, Pennsylvania, Massachusetts and Georgia, to Fort Worth. From Fort Worth to points in Florida inbound between 5/13/66 and 6/1/66 shipments ranged between 200 pounds and 4,750 pounds. Three outbound shipments weekly averaging between 200 and 250 pounds. | Roadway, East Texas, Standard, ET & WNC, Hennyhan, Tennessee, and Perkins. | Wants 2- or 3-day service from South Carolina and Virginia, and 3-day service from Georgia. Average transit time now is 6 days. | Bowman and Johnson. Transit time appears to represent all shipments made during period. |
| 155. (427) Stephen Jensen Carpet Co., Inc., Dallas, Tex. Carpets | From Philadelphia, Pa., to points in Louisiana and Texas, including shipper's warehouse at Dallas. Weekly shipments range between 700 and 1,000 pounds. | Strickland, Atlas, and Roadway | Wants between 2- and 3-day service to Dallas. Shipper states Strickland holds traffic at origin for 4 or 5 days before attempting delivery. | Bowman and Johnson |
| 156. (428) American Thread Company, Dallas, Tex. Threads, tapes, and zippers | From Marion, N.C. to Dallas. Truckload and LTL shipments range between 12 pounds and 52,502 pounds monthly. | Trailboss, Spector, East Texas, Overnite, Gardner, Red Ball, Sperling, Acme, Air Lines, Wall and Bowen | Wants 3-day single-line service. | Bowman, Johnson, and Jones. |
| 157. (429) Modern Carpet Industries, Dallas, Tex. Carpets | From Dalton, Ga., to Dallas. Two TL shipments were monthly. | Georgia Highway, Piggyback, Southern, and Mercury. | Wants 3-day single-line service. Must now allow 8 to 10 days load time. Average transit time now is 8 days, including weekends. | Bowman. Transit time does not include all shipments during period covered. |
| 158. (430) Nuwa Laboratories, Texarkana, Tex. Chemicals and drugs | From Texarkana to Atlanta, Ga., and Birmingham, Ala. About 2,000 pounds move monthly to Atlanta and about 6,000 pounds move monthly to Birmingham. | East Texas | Prefers single-line service and desires the availability of more than one single-line carrier. | Red Ball. East Texas presently serves shipper daily in single-line service. |
| 159. (432) Smith-Blair, Inc., Texarkana, Tex. Fabricated pipe, fittings, and related steel articles | From Texarkana to Birmingham, Ala., Atlanta, Ga., and Greenville, Miss., and points in Florida. Monthly shipments range between 32 and 4,840 pounds. | East Texas A & P, and Red Ball. | Wants an additional single-line carrier. | Red Ball. East Texas presently serving shipper in single-line service. |
| 160. (433) Southeastern Drug Corp., Dallas, Tex. Pharmaceutical products. | From points in Massachusetts, New Jersey, Connecticut, New York, Georgia, Maryland, Virginia, and North Carolina, to shipper's distribution centers located at points in Texas. Monthly shipments range between 50 and 1,370 pounds. | Strickland, Rutland, Rapid Trans. Assn, Prar, National, East Texas, Texas Freight, Tennessee, Arnold, Bowman, Watson-Wilson, and Hunter. | Wants faster service. Average transit time is now 5 days, including weekends. | Bowman, Johnson, and Jones |
| 161. (434) Southwest Pump Co., Houston, Tex. Gasoline pumps and related parts. | From Houston to Atlanta, Ga. About 50,000 pounds moved between 3/9/66 and 5/21/66. | Red Ball, Cardinal, and Roadway | Wants 3-day service. Shipper states that average transit time is now between 4 and 6 days, including weekends. | Red Ball. Roadway presently serving shipper in single-line service to Atlanta. No specific complaints. |
| 162. (435) Switchback Portable Corp., Dallas, Tex. Immersible vac materials. | Between Dallas and Greenville, Miss., and between Dallas and Atlanta, Ga. Shipper moves 1,000 pounds a month from Dallas and approximately 40,000 pounds is received at Dallas from Atlanta. | Red Ball, T & P, ET & WNC, East Texas, and Roadway. | Wants second morning service. Present service too time-sistent | Red Ball. Roadway requires 2.3-day service excluding weekends. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 165. (W39) Carabel Carpets Inc., Dallas Tex. Carpets<br><br>166. (W37) Hamilton Investors of Memphis, Grand Prairie, Tex. Hallboard | From Dalton, Ga., to Dallas, Fort Worth, and Houston, Tex. About 400,000 pounds of TL and LTL shipments move each month.<br><br>From Atlanta, Ga., to Grand Prairie and return, and from Grand Prairie to Birmingham, Ala., and Greenville, Miss. Shipments range between 100 and 1,000 pounds three to four times a month. | Roadway, Piggybacks, Georgia Highway, Bowman, East Texas Trucking, Gardenia, and Jones<br><br>Lone Texas, Mercury, and Red Ball | Prefers single-line 3-day service. Must presently allow between 5 and 7 days load time. Average transit time is 4 days, including weekends. Wants faster and more consistent service. | Bowman, Johnson, and Jones. Transit time does not appear to include all shipments during period surveyed. Red Ball. Shipper has available the single-line service of Red Ball, Transcon, and Gardenia between Atlanta and Dallas (Grand Prairie is in the Dallas commercial zone), and Mercury to Birmingham.<br>Herrin. |
| 167. (W40) Royal Crown Bottling Co., Houston, Tex. Flavoring compounds | From Columbus, Ga., to Houston. Weekly TL and LTL shipments ranges between 200 and 8,500 pounds. | Cole, Herrin, Ryder, and Missouri Pacific. | Wants recent morning service. Must now allow 7 days load time. | Herrin. |
| 168. (W41) Dallas Brush Manufacturing Co., Dallas, Tex. Plywood, steel, and hair fiber | From points in South Carolina, Vermont, New Jersey, and Pennsylvania to Dallas. About 50,000 pounds moves monthly. | Central, Lonsdale, Welch, North Penn., Lee-Lond, Prorite, Transcontinental, Gendway, Republic, Old-Continent, Brown, Strickland, and Transcon. | Needs faster service. Wants 3- to 5-day service. Average transit time is now 7 days, including weekends. | Bowman and Johnson. |
| 169. (W42) Dallas Handbag Co., Dallas, Tex. Ladies handbags, gloves, and belts | From Dallas to Mobile, Ala., Jackson, Miss., and Atlanta, Ga. Weekly shipments average about 150 pounds. | Red Ball, Braswell, East Texas, and Gardenia. | Wants faster service. Must now allow between 4 and 7 days in-transit time. Shipper has experienced delays in pickups. | Herrin. |
| 170. (W43) | Dallas and Houston, Tex. | | | |
| 171. (W44) Lone Star Steel Co., Dallas, Tex. General merchandise | Inbound from about 2,000 suppliers in Tennessee, South Carolina, North Carolina, Georgia, Alabama, Florida, and Mississippi. Shipments move to shipper's warehouses located at Dallas, Houston, and San Antonio, Tex., Oklahoma City and Tulsa, Okla., Shreveport, La., and Albuquerque, N. Mex. Also the shipments move to its stores located in western Louisiana, portions of Arkansas and Missouri, Texas, Kansas, Oklahoma, and New Mexico. Between July 1961 and March 1962, shippers had 2,420 shipments from the origin territory to the destination territory. | See shippers under Georgia heading<br><br>Harper, (T&NW, Ryder (TPT, Georgia Highway, Perkins, Jordana, T.I.M.E., Transcon, and Roadway, among others originate the traffic. Central, ETSW, Gardena, T.I.M.E., Red Ball, Mercury, Roadway, Transcon, Brown, Herrin, Braswell, among others, deliver shipper's traffic. | Shipper indicates that some of the service it receives to the Southwest is good. However, it is not consistently good and shippers must maintain a larger inventory than it desires. Shipper wants at least 3-day service to Dallas on 95 percent of its shipments and overnight service to Louisiana on about 90 percent of its shipments. Occasional ly, it requires 2-day service to Southwestern points. The average transit time of the 2,420 shipments listed, including weekends was 5.5 days. Shipper receives complaints either every day regarding the delivery time on shipments to the Southwest. It wants consistent 3-day service between points in the origin and destination territory. A transit time study of 3% shipments delivered between March 1961 and May 1962 shows that on inbound shipments to Houston shipper is receiving between 4- and 15-day service (including weekends) and in all but one instance shows the transit time involved 10 or more days including two weekends. The listed shipments moved from North and South Carolina, Virginia and Georgia. The one shipment delivered in 4 days did not include a weekend. Including weekends the average transit time on these shipments is 5.7 days. | Strickland, Red Ball, and Herrin.<br><br>Strickland. Shipper was not aware that Roadway serves all the points but one in Virginia, North and South Carolina, and Georgia listed on its transit time study. This carrier's service is described as satisfactory. |
| 172. (W45) Wagner Assoc., Inc., Hamilton, Tex. Industrial-children's wear and dresses. Inbound-cotton piece goods | Inbound to Hamilton from Biltmore and Greensboro, N.C. and points in South Carolina, Mississippi, Georgia, and Virginia. About 100 inbound shipments are received each month with an average weight of 1,000 pounds a shipment. Outbound from Hamilton shipments move to Atlanta, Ga.; Birmingham, and Montgomery, Ala.; Jacksonville, Fla.; Andrews, Miss.; Monroe, La.; Charlotte, N.C.; Roanoke and Richmond, Va.; and Washington, D.C. Between 500 and 600 shipments a month weighing between 50 and 750 pounds a shipment move to these points. | Roadway renders single-line service from North and South Carolina. The services of ETSWRC interline with Western Gillette, Ryder with Central, Cumberland with Florence, and Greenville and GMC are used. Central, Gordons, and Red Ball originate most of shipper's traffic from Hamilton. | | |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Applications supported and remarks |
|---|---|---|---|---|
| 173. (W46) Tarpaulin Products, Dallas, Tex. Compressors and air conditioners | Outbound from Dallas shipments move to Jackson, Miss., Birmingham, Ala., and Atlanta, Ga. Shipper has about 30 outbound movements a month which weigh an average of between 1,000 and 2,000 pounds a shipment to these points. Shipper has about the same volume of inbound movements. Between 1/30/60 and 9/1/60 shipper had 5 movements to Jackson, 18 to Birmingham, 5 to Huntsville, 1 to Mobile, and 1 to Helena, Ala. All of the shipments were LTL. | Strickland, Herrin, Red Ball, Mercury, East Texas, and Transcon. | Shipper wants overnight service between Jackson and Dallas and second-day service between Birmingham and Dallas. It introduced a transit time study of 32 shipments - 13 of which moved from Jackson to Dallas and the remainder of which moved from Birmingham to Dallas. All of the shipments were handled in the first 9 months of 1964. Seven of the shipments from Jackson were delivered in 2 days (one including a weekend). Transit times were not given for 3 of the Jackson shipments and the remaining 4 shipments were delivered in 4 days, including weekends in all instances. The Birmingham shipper is receiving between 2 and 5-day service. In all but one intrastate where delivery required more than 3 days a week was involved. | Strickland.<br>Shipper believes that this Mercury provides single-line service from Dallas to Birmingham or Mobile. Red Ball renders second-day service excluding weekends and holidays. |
| 174. (W47) Lasher of Dallas, Dallas, Tex. Textile products | Inbound to Dallas shipper receives most of its traffic from North and South Carolina with some from Alabama, Mississippi, and Arkansas. Shipper receives about 30,000 pounds monthly. | Air Freight, REA, Bowman, Mercury, Roadway, Thornton, CTWF, Piedmont, Tennessee, North Alabama, Gardena, F & D, Red Ball, and Strickland. | Shipper wants overnight service between Jackson and Dallas, and second-morning service between Atlanta and Dallas. It introduced a transit time study of 34 shipments in-cost between 1/22/63 and 7/26/64 to Dallas. Of the 29 shipments, 22 moved from points in North Carolina, 3 moved from points in South Carolina, 2 moved from Alabama, 1 from Mississippi, and 1 from Tennessee. Including weekends, the average number of days in transit was 7.1. | Strickland. |
| 175. (W48) Alton Manufacturing Company, Dallas, Tex. Air conditioners and air cleaners | From Dallas to points in Florida, Georgia, and North and South Carolina. Between January and August 1960 shipper had 126 shipments to specified points in Georgia, Florida, Alabama, and North and South Carolina. All of the shipments weighed under 10,000 pounds with some weighing only 36 pounds. | Transcon, Roadway, CTWF, Gardena, Mercury and Herrin. On shipments to Florida Herrin interlines with GM & N and Ryder. | Shipper is not satisfied with the existing service especially to points in Florida. It cited one example of poor service on the part of Herrin. | Bowman, Johnson, and Jones.<br>Shipper is reasonably satisfied with present single-line service by Herrin to Jackson. |
| 176. (W49) American Permanent Ware Company, and Troy Service Co., Dallas, Tex. Cooking pans and serving trays. | From Dallas between 8/1/60 and 10/1/60, shipper had a total of 25 movements, weighing a total of 5,750 pounds with an average weight of 380 pounds to Miami, Tampa, Jacksonville, and Orlando, Fla. Occasionally, shipments are made to other points in Florida. | Herrin is used to Jacksonville. Red Ball, Transcon, Braswell, and Gardena with connecting carriers are also used. | Shipper maintains a warehouse at Miami, but it is unable to maintain a complete inventory. It is not satisfied with the transit time to Florida. | Bowman. |
| 177. (W50) Texarkana Concrete Products Company, Inc., Texarkana, Tex. Rocks, nuts, asphalt, glass, plywood, sandblast parts and sales items | Inbound to Texarkana between January and April 1964, shipper received 7 shipments from Kansas City, Kans.; 1 from Birmingham, Ala.; 1 from both Helena and Jackson, and 2 from Pascagoula, Miss.; 1 from Memphis, and 2 from Chamberlain, Penn.; and 10 from Baltimore, Md. All of the shipments were LTL with an average weight of 1,000 pounds. | ABF, ETWF, Red Ball, Arizona Motor Freight, West, Roadway, KT & WMC, Herkimer, Strickland, and Jones. | Shipper wants 3-day service from Baltimore and Philadelphia, and second-morning service from Kansas City and Birmingham. It would like another carrier with terminal facilities in Texarkana. Shipper's transit time study covered shipments delivered between January and April 1964. Two shipments from Baltimore were listed. Seven of these moved through Dallas with transit times to this point, including weekends, of between 4 and 9 days. The shipments from Pascagoula were delivered in 12 and 7 days, including weekends; one from Memphis was delivered in 3 days, including a weekend; and 1 from Birmingham was delivered in 7 days, including a weekend. | Bowman and Jones. |
| 178. (W51) H.T. Hedlund & Son Company, Dallas, Tex. Dinnerware and condiments | From Dallas to points in Florida (7,000 pounds a month), Alabama and Tennessee (30,000 pounds a month) and Georgia, North Carolina and South Carolina (25,000 pounds a month). Average shipment weighs 500 pounds. | Johnson, Ryder, T.I.M.E., Tennessee, GMF, Gardena, ETWF, Red Ball, Mercury, Roadway, and Bowman. | Wants single-line service to most points to avoid delays. | Johnson, Bowman, and Jones.<br>Roadway offers single-line service to points in Carolinas and Georgia. Shipper seems not satisfied with Roadway but wants added competition. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 177. (464) Dalen Dobbins Paper Co., Dallas, Tex. Paper products. | From shipper's Dallas warehouse to Atlanta, Ga. and from Atlanta to Dallas (5 to 20,000 pounds, no time period specified) From shipper's Atlanta facilities to southern Arkansas and from Dallas to southern Arkansas (from 1,000 to 20,000 pounds a month), and Louisiana (20,000 pounds a month) and 15,000 pounds a month from Dallas to El Dorado. | ATSF, Strickland, Red Ball, and Brownell. | Wants overnight service from Atlanta to Little Rock and second-morning service to other Arkansas points. Wants overnight service from Dallas to points on Arkansas Highway 82. It allows 10 days lead time from Atlanta to Camden, Ark., and wants 7-day service. Wants overnight service from Atlanta to Shreveport. | Bowman, Johnson and Jones. Red Ball can serve many points directly. |
| 178. (465) Hunt Sales, Inc., Arlington, Tex. Aircraft hardware. | From Arlington to points in Georgia, Florida, New York, and New Jersey. From 1/14/55 to 10/6/56 shipper had in excess of 100 shipments to points in the above States. Each shipment weighed from a minimum to 500 pounds. | Strickland, Transcon, T & P, and Hembey. | Wants better transit time with less damage. Wants 4- or 5-day service. | Jones, Johnson, and Bowman. Brown and Harris to Florida points. No evidence to show that existing service is inadequate. |
| 179. (471) Plantimat Industries, Dallas, Tex. Plastic shipmodeus flooring material and natural marble | Exports to Italy to west coast through Atlanta and Birmingham. Exports 15,000 pounds to Spain a month from above points Presently shipping 1,500 pounds a week from Dallas to Texarkana, Ark. | Moore shipped to area. | Wants proposed service to help growing business. | Bowman, Johnson and Jones. Traffic shipped in ocean requires insulated equipment. |
| 180. (472) Curtis-Mathes Company, Dallas, Tex. Home electronic items | From Dallas to points in Virginia, North and South Carolina, Florida, and Arkansas. No volume figures given except that shipments weigh less than 2,000 pounds. | ATSF, Red Ball, Transcon, Jones, Southwestern, Central, and Yankee. | Problems with transit time and rate restrictions. | Bowman, Johnson, and Jones. No evidence presented to show need for additional service or unsatisfactory existing service. Herrin. It appears that no evidence was submitted to show actual loss or poor transit time. |
| 181. (474) Telaugh Aluminum Company, Dallas, Tex. Aluminum ornamental products | From Dallas to Atlanta, Ga., and Jackson, Miss. Ships to the above points once a week. Each shipment averages 500 pounds. | Red Ball, Brownell, and Gresham. | Has trucking and loss problem. Wants overnight service to Jackson and second-morning service to Atlanta. | Herrin. Customer to Jackson designation carrier. No complaints about Brownell's service. |
| 182. (476) Texas Paints & Services Co., Dallas, Tex. Air-conditioners, furnaces and parts | From Dallas to points in Mississippi. Only shipments are made to points in Mississippi. They range from 100 to 500 pounds with an average of 250 pounds. | Red Ball and Brownell | Wants consistent transit time to Jackson, Miss. | Herrin. Customer to Jackson designation carrier. No complaints about Brownell's service. |
| 183. (477) Philadelphia Carpet Co., Dallas, Tex. Carpets | From Carrollton, Ga., to Dallas. Approximately 50,000 pounds moves each month. | MCA or Georgia Highway to Atlanta, Ga., and interchange with other Hembey or Ryder in Dallas. | Problems in tracing under joint-line arrangement and need for expedited delivery in 2-day service. | Bowman. Shipper indicates that it has been receiving shipments on a regular basis. |
| 184. (478) Ying Textile Mills Co., Dallas, Tex. Cotton and synthetic fibers. | From points in the Southeast to Dallas. Between 100 and 1,500 pounds moves three times a week. | Hembey, East Texas, Transcon, and Brownell. | Existing carriers have not been able to provide overnight service from Atlanta, Ga., to Dallas as promised. | Herrin. Shipper expressed a need for service from Atlanta only. Applicant does not offer overnight service. |
| 185. (479) Stevinson Co., Dallas, Tex. Office furniture | From Dallas to points in the Southeast and Mississippi. Approximately 500 pounds moves twice a week. | Red Ball and Brownell. | Dissatisfied with delivery time. Needs overnight service to Jackson, Miss. | Herrin. Red Ball offers second-day service to Jackson, and has never had a complaint from customers. Red Ball. |
| 186. (480) H. E. Pearce Co., Dallas, Tex. Industrial hose, V-belts, rubber hose, and conveyor belts | From shipper's Atlanta, Ga., facility to points in Texas and Louisiana (approximately 10,000 pounds a month); from Dallas, Tex. facility to Atlanta (approximately 3,000 pounds a month); and from Dallas to Birmingham, Ala., Jacksonville (1,000 and 10,000 pounds of "conveyor belts" a month). | Transcon and East Texas. | Better service offered by applicant, and steady increase in business. Industrial hose are highly susceptible to damage in transit, and are shipped crated or in bales. Shipper contends that other single-line motor carrier services between Dallas and Atlanta are not adequate. | |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 187. (482) Porter-McClure Company, Texarkana, Tex. Carpets and padding | From Alabama, Georgia, and Mississippi to Texarkana, Tex. Shipments range from 25 to 2,750 pounds a shipment weekly. | Jones Fast Freight, Bowman, CAF, Jones Freightways, CTNF, Gordons, Mercury, Northern, Red Ball, Rumbley, Ryder, Southwestern, Strickland, Thurston, and Wilson. | Joint-line service inadequate. Wants faster service. Average transit time is now 4 days, including weekends. | Bowman and Jones. Shipper is not satisfied with the services of carriers operating over the Memphis gateway to Texarkana, but does not give any specific complaints concerning them. Transit-time study does not include all shipments during the study period. |
| 188. (483) A.M.I. Searchlight Co., Fort Worth, Tex. Golf clubs, golf balls, and golf equipment. | From Fort Worth to points in Alabama, Connecticut, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, and South Carolina. Shipments weigh from 14 to 519 pounds a shipment. | Mercury, Railway, parcel post, and air freight. | Joint-line service inadequate. Needs faster service. Presently allowing 10 days to 2 weeks lead time. | Bowman, Johnson and Jones. Shipper is aware that Mercury can serve certain Florida points in single-line service. Shipper states that if any other carrier can give single-line service to any of the destination States involved, they have not solicited this traffic. |
| 189. (484) Hardwick Fiber Company, Sherman, Tex. Cotton gin machinery and related parts | From Sherman to points in Alabama, Georgia, Louisiana, Mississippi, North and South Carolina, and Tennessee. Approximately 1 million pounds moves monthly. Shipper receives from Birmingham, Ala., at Sherman, approximately 500 pounds a week. | Red Ball, Central Freight Lines, Gordons, J. H. Rose, C&S Tramp., Jeffries Drake, Air Freight, Dixie-Highway, and Granville. | Single-line service would be more convenient. Wants second-morning service to Greenville, Miss., and third-morning service to Atlanta and Birmingham. | Red Ball. Traffic is seasonal. Roadway has single-line service to some of the points in the southeast, but shipper has never used its services. Shipper has used Jones' single-line service to Greenville, S.C., but had problem tracing. Hydraulic lift-gate equipment is required. |
| 190. (485) Old London Foods, Dallas, Tex. Cellophane | From Atlanta, Ga., to Dallas. Approximately 1,000 pounds moves monthly. | Roadway and United-Mercury. | To obtain second-morning delivery, and to reduce present lead-time requirement. Presently allowing between 3 and 4 days lead time. | Red Ball. Shipper is aware of the single-line service of Gordons and East Texas between Atlanta and Dallas, but believes that their service through Memphis increases the chances of not getting consistent service. Shipper has tried the single-line service of Transcon but states that it was not satisfactory. |
| 191. (486) Heritage Soap & Confectionery, Marlin, Tex. Gift items, soap, pottery and candles | From Marlin to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. (Approximately between 2,000 and 5,000 pounds moves a month). | Red Ball. | All shipments beyond Jackson, Miss., require interchange causing delay in delivery. Wants third-morning service to all points. | Red Ball. Shipper presently satisfied with service of Red Ball, except that interchange on shipments to Atlanta (one of its best sales area) causes a delay in delivery. Commodities do not require refrigeration, but insulated equipment is helpful. |
| 192. (487) Harris Electric Manufacturing Company, Itasca, Tex. Fluorescent light fixtures and plastic lenses and louvers | From Itasca to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Approximately 500 pounds moves weekly; 40,000 pounds monthly, and between 500 and 1,000 pounds weekly to the respective points. Truckload and LTL shipments. | Red Ball, Central and private carriage. | Faster service needed. Commodities are fragile. | Red Ball. A substantial volume of shipper's traffic presently moves in private carriage. |
| 193. (488) Seal Line, Inc., Palestine, Tex. Glass containers | From shipper's plant-site at Palestine to Atlanta, Ga.; Birmingham, Ala., and Greenville, Miss. Between 9/1/54 and 10/31/56 about 156,015 pounds moved to Atlanta, about 750,000 pounds a year moves to Birmingham, and during summer months about 70,000 pounds a month moves to Greenville. Truckload and LTL shipments. | Red Ball, Dixie, Ryder, and private carriage. | Joint-line service inadequate. | Red Ball. If the authority herein were granted shipper would continue to utilize private carriage, in addition to the available motor common carrier service. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 186. (#48) Charles Pfizer & Company, Dallas, Tex. Drugs, cosmetics, and pharmaceuticals | Between shipper's Atlanta, Ga., and Dallas facilities. Approximately 9,000 pounds moves a month to Dallas from Atlanta and twice this volume moves from Dallas. | Red Ball and Cardinal. | Not receiving consistent second-day service. | Red Ball. Shipper is aware of other single-line carriers between Atlanta and Dallas, but did not give an explanation why their services were not satisfactory. Appears that traffic from Atlanta is routed by that office. |
| 186. (#48) Cunningham Transfer and Storage Co., Houston, Tex. Household goods and personal effects | From Houston to Atlanta, Ga., Birmingham, Ala., Greenville, and Jackson, Miss. | Red Ball, Roadway, and Dumont. | Interlining arrangement unsatisfactory. Problems in getting pickups. Carriers wait until 5:00 or 6:00 p.m. to make pickups and by that time their vehicles are almost full and there is not enough room for all of shipper's merchandise and shipper has to wait until next morning to get shipment picked up. | Strickland. Shipper states that some of existing carriers render direct service but that it has to wait to find out if a particular shipment will move direct. No cross-examination. |
| 188. (#51) Alloy Tube & Pipe Company, Houston, Tex. Stainless steel pipe and sheet, and aluminum pipe | From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss. Approximately between 100 and 3,000 pounds (6 shipments) moves monthly. | East Texas, Ryder, Harvey, Red Ball, and Harris. | Shipper has difficulty in obtaining pickups on time. | Strickland. East Texas and Harvey offer single-line service to Jackson. Harvey offers single-line service to Birmingham. East Texas offers joint-line service to Atlanta. Johnson and Bowman. |
| 189. (#52) Price Flour Mills, Houston, Tex. Carpets and rugs | From points in Georgia, New Jersey, Pennsylvania, South Carolina, and Tennessee to Houston. Approximately 15,000 pounds moves a month. | East Texas, Roadway, and Ryder. | Need faster service. Average transit time from Dalton to Houston is 5.5 days, including weekends. | |
| 190. (#53) W. H. Corvin and Company, Houston, Tex. Glassware, chemicals, laboratory supplies, and machinery | From Houston to points in Maryland, Florida, Georgia, North Carolina, South Carolina, Alabama, Louisiana, Kentucky, Tennessee, and New Jersey; and from Philadelphia, Pa., New York, N.Y., and Baltimore, Md., to Houston. Approximately 100,000 pounds a month moves inbound and outbound. | East Texas, Harris, Harvey, Johnson, Red Ball, Roadway, Ryder, Strickland, Thompson and Eastern Air Lines. | Interlining service inadequate. Wants single-line service. | Bowman, Johnson, and Red Ball. Shipper indicates that it has single-line service from Houston to New York and Knoxville, Md. There are several carriers with single-line service from Houston to specified points in Florida, and Georgia. Strickland. Shipper would receive third-day service in a two-line haul from Charlotte and Tampa, if the application were granted. |
| 190. (#53) General Electric Co., Industrial Products Department, Chemical Metallurgical Division, Houston, Tex. Fluorite Lumpsize | From Tampa, Fla., Atlanta, Ga., Charleston, S.C., and Jackson, Miss., to Houston and from Houston to Atlanta, Birmingham, Ala., and Greenville, and Jackson, Miss. In-bound - approximately 1,200 pounds (30 to 35 shipments) moves a month. Outbound - approximately 1,000 pounds (10 to 20 shipments) moves a month. (Estimated - approximately 2,000 pounds (50 to 60 shipments) moves a month. | Ben Hines, East Texas, Harvey, and Ryder. | Needs faster service. Wants second-day delivery on shipments to and from Atlanta, Birmingham, Jackson, and Greenville. Wants second-day pickup at Atlanta on company's Houston to Tampa shipments. | Strickland. Shipper would receive third-day service in a two-line haul from Charlotte and Tampa, if the application were granted. |
| 191. (#49) Rockwood Uniform Supply Company, Houston, Tex. Cotton wiper rags | From Atlanta, Ga., to Houston. Monthly shipments weigh between 1,500 and 3,500 pounds. | Roadway. | Faster and more consistent service needed. | Harris. |
| 191. (#49) La Fronce Incorporated, Houston, Tex. Furniture fabrics, sunglasses, and furniture supplies | From La France, S.C., Atlanta, Ga., Lindale, N.C., New York, N.Y., and Boston, Mass., to Houston. Shipments weigh between 25 and 2,000 pounds. | Ben Hines, East Texas, Red Ball, Roadway Ryder, Strickland, and T.I.M.E. | Interlining service inadequate. Needs more dependable service. Wants 2-day service from La France and Atlanta. | Bowman and Johnson. Shipper has made no specific complaints about any particular carrier, except Ryder. Frequency of traffic not given. |
| 192. (#50) Dunlop Tire Corp. Wholesale Division, Houston, Tex. Machinery, machinery parts and reconditioning equipment | From Atlanta, Ga., to Houston and from Houston to Atlanta, Birmingham, Mobile, and Montgomery, Ala. Shipments range between 100 and 1,000 pounds. One shipment moves a month to Atlanta, four a year to Montgomery, and 3 a year to Birmingham. | Roadway, and Ryder. | Needs faster service. Ryder gives late afternoon pickup. Wants 2-day service to and from Mobile, Birmingham and Montgomery. | Harris. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing service utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| [illegible] Houston, Tex. Household goods | From Houston to points in Alabama, Florida, New Jersey, Pennsylvania, and Tennessee. Approximately 20,000 pounds moves a month. | Bowman, Branch Mfr., Contract, Consolidated Copperstate, Consolidated Freightways, Harris, Howard Hall, OTC, Mercury, Mo-Kan Trucking, Red Ball, Tamiami Freightways, and Thompson. | Need faster service. Allows peak time of 7 days. Wants four-day service to Miami, and points in Florida, Pennsylvania, New Jersey, Delaware and Maryland, and Washington, D.C., and 2-day service to Atlanta. | Bowman and Johnson. |
| [illegible] Houston, Tex. Piece goods and upholstery supplies | From Burlington, Roanoke Rapids, Concord, High Point, and Kings Mountain, N.C., Columbus, Ga., Jeffrey, Milton, and Salisbury, S.C., Sunbury, Pa., Hillside Park, N.J., Bronxville, N.Y., and Jeffrey, R.I., to Houston. Approximately 50 shipments move a month weighing between 50 and 2,437 pounds each. | Roadway, Southern Pacific, Strickland, and T.I.M.E. | Wants faster transit time. Transfers the Florida service at Atlanta, Ga. from points in North Carolina, Georgia, South Carolina, New Jersey and Pennsylvania fairly satisfactory. | Bowman and Johnson. |
| [illegible] Houston, Tex. Electrical wire and cable | From Portsmouth, N.J., Farmingdale, N.Y., and Irvington, N.J., to Houston. Approximately 4 shipments a month weighing between 50 and 1,000 pounds each.

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 211. (508) Daniel Radiator Corp., Houston, Tex. Radiator cores | From Houston, Fort Worth, and Dallas, Tex., to Atlanta, Ga., and Philadelphia, Pa., and from Lancaster, Pa., and Perth Amboy, N.J., to Houston. In 3 months ending 1956 30,000 pounds (10 shipments) moved to Philadelphia. | Brown Express, East Texas Motor Freight, Kroger-Consolidated, Montrose Transport, Roadway, Springfield Motor Ship., Strickland, Transcontinental, and Wiseman. | Needs faster service. On 15 shipments average transit time was 9.4 days including weekends. Wants 3- or 4-day service. | Herrin and Johnson. Shipper is aware of two or three single-line carriers from Houston to Philadelphia. Witness 119 (376) under Tex heading, on behalf of same shipper supported Strickland. It appears that Order has single-line service to Philadelphia from Houston. Strickland. Herrin serves points in Arkansas; Red Ball serves Greenville, and Jackson. Mercury serves Birmingham, and Ryder serves Atlanta. Shipper has only made general complaints against existing services. |
| 212. (510) General Electric Company, Distribution Accounting Department, Construction Industries Division, Houston, Tex. Electric control gear and related parts | From Houston to Atlanta, Ga., Birmingham, Ala., Jackson and Greenville, Miss., and points in Arkansas approximately between 18,000 and 20,000 pounds of TL and LTL shipments moves weekly. | Herrin, Red Ball, Mercury, and Ryder. | Needs faster service. Shipper has received complaints from customers. | |
| 213. (511) Mim-Pak, Inc., Houston, Tex. Wood Packaging machinery and component parts and accessories | From Houston to points in Alabama, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia. Shipments weigh between 24 and 12,000 pounds, and a total of 370,000 pounds moved to the destination States during a six-month period in 1956. | Roadway, Ryder, Consolidated, Herrin, Strickland, Texas Transit, Mercury, and Lee Way. | Needs faster service, and machines subject to damage in one-line service. | Herrin and Johnson. Roadway can render shipper single-line service. |
| 214. (514) Robert Butler Company, Division of R.B. Butler, Inc., Bryan, Tex. Iron and steel articles and metal buildings | From Birmingham, Ala., to points in Texas. Monthly LTL and TL shipments weigh between 8,750 and 150,000 pounds. | Eagle, Central, and Red Ball. | Joint-line service inadequate, damage to products, and needs the service of a carrier with a local terminal for expedited pickups and deliveries. | Red Ball. Shipper needs the dependable service of a carrier to make scheduled pickups and deliveries so that it can coverage for unloading. Red Ball has terminal near shipper and has been found dependable. Herrin and Johnson. Unsupported complaints. |
| 215. (516) A.I.R., Inc., Houston, Tex. Materials handling equipment | From Augusta, Ga., to Houston. From Knoxville, Ohio, to Houston, Beaumont, Orange, and Texas City, Tex., and, from Springfield, Tenn., to Houston. Approximately 2,000 pounds (three to four shipments), once a week. | Strickland, Herrin, East Texas, Ryder, and Barnett. | Needs faster service. Wants single-line service. | Strickland. |
| 216. (517) Wright Light, Inc., Houston, Tex. Fluorescent light fixtures and parts | From Houston to Atlanta, Ga., and Jackson, Miss. Approximately between 200 and 1,500 pounds moves two to three times a month to Atlanta and approximately between 200 and 1,000 pounds moves twice a week to Jackson. | Red Ball, Mercury, East Texas Motor Lines, and United. | Needs faster service. Wants 2-day service between Houston and Atlanta and 2-day service from Houston to Atlanta. | Herrin. No specific complaint against any particular carrier. |
| 217. (518) Anchor Glue Rope Company, Houston, Tex. Glue rope and glue rope materials | From Houston to Atlanta, Ga., and Jackson, Miss., and from Jackson, Miss., to Houston. Between 200 and 3,000 pounds (approximately three shipments) move a week. (Truckload and LTL shipments.) | Red Ball, Mercury, Roadway, and Brownell. | Needs faster, more dependable service. Wants overnight service from Houston to Atlanta and 1-day service between Jackson and Houston. | Herrin. It appears that Roadway, East Texas, and Mercury offer single-line service to Atlanta. Red Ball is the only existing service against which specific complaint was made. |
| 218. (519) The Stephens Company of Houston, Houston, Tex. Carpets, tile and linoleum | Inbound to Houston from points in Georgia, Pennsylvania, New York, South Carolina, Florida, and Tennessee. Company received a total of 27 shipments during a 3-month period in 1956 from the origin States with each shipment weighing between 25 and 22,000 pounds. | East Texas, Ryder, and Roadway. | Wants 3-day service from New York, and Pennsylvania area. Wants 2-day service from the Carolinas, and Tennessee. Wants third-day service from Florida. Average transit time from Tennessee points is 4.0 days; from Georgia 3 days; from Florida 7 days; from New York 10 days; and from Pennsylvania it is 10 days. (No figures given for other points.) | Herrin, Roadway, and Johnson. Shipper has not tried Ryder's single-line service from New York and Philadelphia. Does if the authority were granted, it appears that either Herrin or Johnson could render single-line service from points in Tennessee or Georgia. |
| 219. (520) P. & G. Merchandising, Inc., Houston, Tex. Advertising materials (wire forms, daily paper boxes and other printed matter. | From Houston to Atlanta, Ga., Jackson, Miss. Birmingham and Mobile, Ala. Shipments weigh between 50 and 500 pounds. | Greyhound and R.E.A. | Greyhound has no pickup and delivery service. Shipper is not satisfied with transit time of existing service (Wants 1-day service to Jackson; 2-day service to Atlanta, and Birmingham and first afternoon service to Mobile. | Herrin. Shipper has used only the service of Greyhound and R.E.A. in the 3 years it has been in business. Frequency of traffic not given. |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 220. (521) Phillips Fan Manufacturing Co., Inc., Houston, Tex. Electric fans | From Houston to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Monthly shipments of approximately 17,500, 35,000, and 35,000 pounds, respectively. | Ryder, Red Ball, East Texas, and Central. | Complaints from customers regarding transit time. Prefers single-line service. Wants proposed second-day service to Greenville, Birmingham, and Atlanta. | Red Ball. Shipments are seasonal. Shipper states that it receives occasional shipments from Birmingham, but no volume is given. |
| 221. (522) Michelin Tire Corp., Houston, Tex. Tires | From Houston to Greenville, Miss. Between February and October 1956, 23 shipments moved to Greenville. Each shipment weighing about 775 pounds. | Red Ball, interlining with Delta. | Needs faster service. | Red Ball. |
| 222. (523) Curtis 1000, Inc., Houston, Tex. Developer | From Atlanta, Ga., to Houston and to points in Louisiana and Arkansas. Approximately 312 pounds moves twice a week. | Jack Gail is used in joint-line with Red Ball. | Needs faster service. Joint-line service inadequate. Wants single-line service. | Red Ball. |
| 223. (524) White Manufacturing Company, Houston, Tex. Pipe fittings and chemical compounds | From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Monthly shipments of approximately 9,000, 4,000 and 1,000 pounds, respectively. | East Texas, Ryder, and Red Ball. | It has a competitor in Memphis, Tenn., giving overnight service to customers in Greenville, Miss., that, it needs faster, single-line service to Greenville to compete. | Red Ball. Shipper's primary customers here in Greenville, Miss. East Texas already renders shipper single-line service to Atlanta and Birmingham, but shipper desires additional service to those points. Red Ball. Shipper produced no specific evidence to show inadequate service. |
| 224. (525) Anchor Fence Division, Anchor Post Products, Inc., of Texas, Houston, Tex. Chain link fencing and related items | From Houston to Birmingham, Ala., and Greenville, Miss. Approximately 720 pounds (two shipments) moves a week. | Mercury and Red Ball. | Delay in pickups and similar loading area. Wants to have regular pickups each day. | |
| 225. (526) Thurber Engineering Corp., Houston, Tex. Air-handling units | From Houston to Atlanta, Ga., Birmingham, Ala., and Jackson and Greenville, Miss. Approximately 4,000 pounds (300 shipments) moves annually. | Brownell, Red Ball, Roadway, and East Texas. | Poor pickup service. Presently allows 7 to 9 days load time to Southeastern points. | Strickland. No specific complaint against any specified carrier. |
| 226. (527) United Cotton Goods Co., Inc., Laredo, Tex. Cotton materials | From Thorne, Greenville, Lyman and Holland, S.C., Rossmary and Roanoke Rapids, N.C., Atlanta, Griffin, Dallas, La Grange, and Thomaston, Ga., and Fairfax, Ala., to Laredo. Approximately 190 shipments move a month weighing between 600 and 3,000 pounds a shipment. | Ryder, Herrin, Central, Roadway, Thurston, Georgia Highway, Herrin, and East Texas. | Joint-line service causes damage to products and is too slow. Wants 2- or 3-day service between Atlanta and San Antonio, Tex., which would be strictly end a portion of the interline. | Strickland. Shipper does not appear to control routing. It stated that existing service "has been good." |
| 227. (528) Gulf Corporation, Galveston, Tex. Portable building, portable building accessories, and signs | From Atlanta and Statesboro, Ga., Vicksburg, Miss., and Hagarville, Ark., to Galveston, and from Galveston to points in Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee (General - about 500 pounds a shipment with 100 shipments a month Outbound - 200 shipments a month consisting of LTL and TL. | "All available" Red Ball, East Texas, and Ryder. | Needs faster service. Wants overnight service from Dallas to Jackson and second-day service to Atlanta and Birmingham. | Strickland. |
| 228. (530) Val Cap Equipment Company, San Antonio, Tex. Curing valves, tire repair materials, rubber scrap and tire lathes | From Atlanta, Ga., and Asheville, N.C., to San Antonio. Approximately between 100 and 1,000 pounds a shipment ranging from 1 to 15 shipments a month. Outbound traffic moves to Florida two or three times a month. The shipments weigh about 1,500 pounds. | East Texas, Roadway, Merchants, and Ryder. | Damages to products and difficulty in collecting claims. Average transit time is 6 days. Wants second-morning service or 3-day service. One of shipper's customers has requested that Ryder not be used on this customer's traffic to Miami, Fla. | Strickland. Ryder and Roadway serve shipper in single-line service. |
| 229. (531) Lone Star Gear, San Antonio, Tex. Printing services | From Atlanta, Ga., to San Antonio. Company receives 3 truckloads each month from Atlanta. | Strickland, T. & P. Railroad, and Roadway. | Needs better pickup service. Wants 2-day service between Atlanta and San Antonio. | Strickland. No specific complaints. Shipper wants hauling service. |
| 230. (532) American Porcelain Enamels, Inc., Houston, Tex. Porcelain ware | From Houston to points in Georgia, Alabama, Mississippi, Florida, and Tennessee. Shipments weigh between 100 and 15,000 pounds. | Red Ball, Herrin, Ryder, and Mercury. | Needs faster service. Joint-line service inadequate because product susceptible to damage. Wants second-day delivery to Birmingham and Atlanta. | Herrin and Johnson. Frequency of traffic not given. |
| 231. (533) Lindenwood Fiberprint, Inc., Houston, Tex. Clothing | From points in Georgia, Virginia, West Virginia, and Tennessee to Fiberprint. Shipments weigh between 100 and 500 pounds with 5 to 6 shipments a week. | East Texas, Longs, Tomlinson, T.I.M.E., Texas Oklahoma, Brown, Aronson, Georgia Highway, Transcon, and Dupart. | Needs faster service. Presently allows 7 to 9 weeks load time. Wants 3-day transit time from Atlanta and Birmingham to San Antonio. | Strickland. No specific complaints. |

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*Summary of evidence of supporting shippers—Continued*

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 252. (698) G. A. Stevens furniture Co., Houston, Tex. Home furniture, carpets and draperies | From Newboro, Hickory, Morganton, Hendersonville, Lenoir, Taylorsville, and Leaksville, N.C., Montgomery, Ala., Jacksonville, Fla., New Brunswick, N.J., and Auburn and New York, N.Y., to Houston. From 1/10 through 10/5/60, 103 shipments weighing 19,900 pounds were received from these points. Shipments weigh between 15 and 1,495 pounds. | Ryder, Roadway, Herrin, East Texas, G & W, Stott Davis, Strickland, and rail service. | Needs faster service to deliver special orders. Average transit time 4 days, including weekends. Wants second-day delivery from Carolinas and third and fourth day delivery from Knoxville and the east coast. Wants 2-day service from Florida and Georgia points. | Johnson and Bowman. Rail is shipper's main form of transportation. Frequency of traffic not given. |
| 253. (695) Walgreen Drug Stores, Chicago, Ill. Clothing, Textile, and other household items. | From points in Georgia, Alabama, Mississippi, North Carolina, South Carolina and Tennessee, to shipper's Houston, Tex. warehouse or directly to stores. Approximately between 90,000 and 95,000 pounds moves monthly. | Herrin, Eastern Texas, Roadway, and Ryder. | Needs faster service (would like transit time under 5 days). It now receives average transit time of about 6 days. | Johnson and Bowman. |
| 254. (588) Hughes Tool Company, Houston, Tex. Industrial rock bits | From Houston and Dallas, Tex., to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia, Connecticut, Maine, New York, and Pennsylvania. Shipments weigh between 351 pounds and 6,791 pounds. | Roadway, Strickland, Mercury, Transcon, and East Texas. | Joint-line service inadequate. | Johnson and Bowman. Shipper states that he is aware of single-line service to several of the destination points named, including Roadway to Pennsylvania, but believes competition is good. |
| 255. (587) Wilson Supply Company, Houston, Tex. Oil field supplies, fittings, and valves. | From Birmingham, Ala., Charlotte, N.C., Philadelphia, Pa., and New Haven, Conn., to Houston. Receive a shipment from Birmingham every 45 to 60 days, weighing about 500 pounds; from Charlotte every 45 days weighing about 250 pounds; from Philadelphia every 45 days weighing about 500 pounds; and from New Haven twice a year weighing about 150 pounds each. | Arco, Ryder, and Shippers and Receivers Association. | Needs faster service. Wants 2-day service out of Birmingham, 3-day service out of Charlotte, 4-day service out of Philadelphia and 6-day service out of New Haven. | Bowman and Johnson. Shipper admits that it has more than one single-line carrier operating between named origin points and Houston. |
| 256. (536) Billy Sniford Co., Houston, Tex. Industrial clothing. | From points in Alabama, Georgia, New York, Massachusetts, Pennsylvania, South Carolina, Virginia, North Carolina, and Maryland, to Houston. Total volume of 98,391 pounds for period January 1961 to April 1961 with 15% shipments. | Pilot, Eastern, Fuller, Transcon, Arco, Roadway, Standard, Ryder, Pacific, Riverside, T.I.M.E. All States, Duncan, CTAM, Cooper, Thornton, Lee Cole, Dixie, Floyd & Beasley, Mason & Dixon, Georgia Hwy., CB&S, Southern, Carolina, Catawba, and Turner. | Needs faster service. With interline service shipper receives between 1 and 13-day service, with Roadway's direct service it receives between 2- and 10-day service, and with Ryder's direct service it receives between 3- and 7-day service. | Bowman and Johnson. Transit study includes all traffic during the study period. |
| 257. (539) The Three Beavers, Houston, Tex. Boxlon and nylon yarn, and handloom fabrics. | From Philadelphia, Pa., and Sandpond, S.C. to Houston. Shipments weigh between 40 and 1,741 pounds. | Strickland, Roadway, and Springmaier. | Needs more consistent service. Wants faster service. Average transit time 7.4 days, including weekends. | Bowman and Johnson. No specific complaint. Transit time does not include all shipments during the study period. |
| 258. (566) Pure Oil Co., and the Wolf, Tex. Petroleum products, oil drums and grease. | From Smiths Bluff to points in Alabama, Florida, Tennessee, and to Greenville, Miss. Monthly 75 shipments of approximately 970,000 pounds. | Ryder and Baggett. | Faster service. | Baggett, Heaton, Bowman, and Red Ball. It appears that Ryder and Baggett presently serve most of the points in single-line or joint-line service. |
| 259. (550) Houston, Tex. | See shipper under Alabama heading. | | | |
| 260. (536) Baytown, Tex. | See shipper under N.C. heading. | | | |
| 261. (681) Standard Oil Company, Houston, Tex. Carbon black goods. | From points in Georgia, North Carolina, and South Carolina, to Houston. About 300,000 pounds moves annually. | Roadway, Ryder, Bowman, United Mercury, Red Ball, and Strickland. | Wants faster service. Wants third-day service. The average transit time is 6 days, including weekends. Presently allows between 5 and 7 days load time. | Bowman, Johnson, and Red Ball. No specific complaints. Transit time includes all shipments made during period. |
| 262. (564) Apcoch Distributing Co., Texarkana, Tex. Sporting goods and general hardware. | From Texarkana to points in Arkansas; from Birmingham, Ala., to Texarkana. Shipments weigh between 196 and 10,000 pounds. | Southeastern, and bus lines | Wants faster service. | Strickland. No specific complaints. Frequency of traffic not given. |





*Summary of evidence of supporting shippers—Continued*

TEXAS—Continued

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 265. (697) H. D. Lee Co. Shipper division. Apparel clothing | (a) From shipper's facilities at Sulphur Springs, Tex., and Chamblee (Atlanta), Ga., to points in Georgia, Alabama, Mississippi, and other eastern and southeastern States. (b) From Chamblee to Texas. (c) From points in the south east to Sulphur Springs, and from mills located in Texas to Boaz, Ala. (d) From shipper's facilities at Boaz to Sulphur Springs. Monthly shipments weigh between 20,860 and 30,827 pounds. | Red Ball, Gordons, Dee Line, Dixie, and Southwestern. | Needs a carrier, in addition to Southwestern, to service Sulphur Springs, Tex. | Red Ball. No complaint except that only one carrier serves Sulphur Springs. |
| 266. (706) Co-operative Home Growers Inc., Tyler, Tex. Rose bushes | From Tyler to Greenville, Miss., Birmingham, Ala., and Atlanta, Ga. Approximately 5.7 million pounds moves yearly. | Red Ball, and Southwestern. | Joint-line service inadequate. | Red Ball. It appears that East Texas can serve shipper to single-line service to Atlanta and Birmingham. The terminus mentioned who are perishable. No specific complaints. |
| 267. (722) Manufacturing Co., Amarillo, Tex. Sub-assembly automotive parts. | From Amarillo to Atlanta, Ga., and return (inbound shipments from Atlanta average about 1 a week. Shipper periodically transports machinery to Atlanta. During December 1960 six shipments were received from Atlanta with a total weight of 21,628 pounds. | Red Ball interlining with Cole and Transcontinental | Desires faster service. Wants 2-day service to Atlanta. | Red Ball. |
| 268. (726) Slaton Company, Greenville, Tex. Inbound-cotton piece goods. Outbound-children's clothing. | Inbound - From points in North Carolina, South Carolina and Atlanta, Ga., to Greenville. (100 shipments a month), and outbound - From Greenville to points in Arkansas, Louisiana, Mississippi, Alabama, and Georgia. (Shipments are 47% weighing from 100 to 500 pounds) | Central and Red Ball. | Present service too slow. Average transit time is 5 to 7 days. Wants 2-day service from Atlanta to Dallas. | Strickland and Bowman. Bowman and Strickland can presently render a joint-line service from the Carolinas to Greenville using the Memphis gateway. Ryder can serve Henderson, N.C. direct. |
| 269. (743) L. O. Hammons Ware Store, Paris, Tex. Boots, shirts and socks. | From Atlanta and Dompano, Ga., to Paris. Receives three to four shipments a week from Atlanta, each is 17% and weighs about 50 pounds. | Red Ball, T & P, S & P, Texas Pacific, Southern Pacific, MKT, Roadway, and Gordons. | Wants faster service. | Red Ball. Roadway can offer direct-line service from Atlanta to Paris. Shipper does not designate the carrier. |
| 270. (747) Texas Tempered Glass Company, Houston, Tex. Window glass | From Houston to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships about 20,000 pounds a month to the southeast in (LTL) | Roadway, Red Ball, and Mercury. | Wants single-line service to those to lessen handling of the glass. Has damage problems with Roadway. | Red Ball. Shipper is cautiously satisfied with Mercury's direct service to Birmingham. |
| 271. (709) Smith Tank and Equipment Company, Inc., Tyler, Tex. Tanks and tank parts. | From Atlanta and Commerce, Ga., to Tyler. Shipper receives 3 loads a month. | Red Ball, Southeastern, Southwestern, and FTMT. | Wants faster service because of its limited storage facilities. | Red Ball. FTMT can serve Tyler directly from Atlanta. |
| 272. (750) Houston, Tex. | See shipper under Louisiana heading. | | | |
| 273. (754) Tyler Pipe and Foundry Company, Tyler, Tex. Cast iron pipe and fittings | From Tyler to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships 17% lots of about 600,000 to 650,000 pounds collectively a month to the above cities. Each shipment averages about 775 pounds. | Red Ball, FTMT, Roadway, Consolidated, Southwestern and Missouri Pacific. | Wants faster transit time because pipes go directly to producers who generally have no inventory. | Red Ball. Roadway offers single-line service to Atlanta. Shipper has the direct service of two irregular route common carriers (50 percent of the tonnage moves by them). |
| 274. (707) Carrier Air Conditioning Company, Tyler, Tex. Air-conditioners, coolers, processors, dehumidifiers. | From Tyler to Greenville, Miss., Atlanta, Ga., and Birmingham, Ala. Has one shipment a week to Atlanta and Greenville and one shipment every 2 weeks to Birmingham. The average weight of these shipments is 1,000 pounds. Also ships 15,000 pounds a month over Atlanta and Birmingham gateways. | Red Ball, FTMT, and Roadway. | Single-line service would be more convenient for it would cut transit time and lessen the chance for damage. | Red Ball. Shipper only had minor complaints about the service. |
| 275. (760) Kyle Manufacturing Company, Wichita Falls, Tex. Chain and sprocket drives | From Wichita Falls to Atlanta, Ga. (as a gateway). Ships 2,000 pounds a month to Atlanta and about 6,000 pounds a month to Atlanta as a gateway for interchange. Average weight of shipment is 250 pounds. | Central, Red Ball, Merchants, ICX (interchanging with Ryder, and Roadway. | Desires a single-line service to avoid transfer and delay problems. | Red Ball. |

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Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 259. (775) Lubbock Manufacturing Company, Longview, Tex. Lead blankets, blankets, cables and bundles | From Longview to Atlanta, Ga., Birmingham, Ala., and Greenville, Miss. Ships an LTL lots weighing 450 to 500 pounds. | Red Ball, and CTAT | Would prefer the convenience of having two carriers and a single-line service. | Red Ball. Shipper has no complaints with present service. |
| 260. (777) Johnson Bane Company, Amarillo, Tex. Twine, pigs, and tube fittings | From Birmingham, Ala., to Amarillo. Receives eight shipments a month, each weighing about 1,000 pounds LTL. | Transcon, CTAT, interlining with T.C.K., Cardinal, and Red Ball. | Wants second-morning service out of Birmingham as 80 programs. Allows a lead time of 7 weeks. Wants proposed 3-day service. | Red Ball. Transcon offers single-line service from Birmingham to Amarillo |
| 261. (780) B Small Brothers, Inc., Jackson ville, Tex. Clothing | From Atlanta, Ga., Birmingham, Ala., as gateways to points in Texas. In June 1966 company received 251,361 pounds at its Jacksonville warehouse and received same amount deliveries/ship of its 51 stores located at other points in Texas during same period. This is representative of company's inbound monthly traffic. | Red Ball, H.P.T. SWT, and I.M.T. | Believes Red Ball will give faster service. Wants 1-to-2-day faster service | Red Ball |
| 262. (783) King Candy Company, Fort Worth, Tex. Candy | From Fort Worth to points in Mississippi. Ships between 1,000 and 2,000 shipments a year to above points. Each shipment weighs between 100 and 150 pounds (LTL). | Red Ball and Jones | Wants Strickland's second-morning service. Too many delayed shipments with present service. Presently allowing 8-to-10-day lead time to Jackson | Strickland. Shipper no used refrigerated service during the summer months. Strickland cannot offer such service. Present delivery time is 5-to-10 days. Brown and Johnson. Has single-line carriers to most points in Alabama and Georgia. Has one single-line service to South Carolina. Has Strickland single-line service to Maryland and Delaware. Service to Memphis is described as satisfactory. Strickland. Strickland has single-line authority from Memphis to Greenville. This application removes Atlanta gateway. Shipper indicates that the present service can be improved. Shipper has not heard of Taylor or Bonham. Red Ball. East Texas carries the following Texas points direct: from Birmingham, Marshall, Tyler, Longview, Henderson, Suffolk, Kilgore, Carthage, Turbertown, and Gade. Red Ball. Report routes the inbound traffic and they do not support Red Ball. |
| 263. (784) Hammond Richwood, Inc., Greenville, Tex. Lingerie | From points in North and South Carolina to Greenville. Receives 50 to 60 shipments a month weighing from 400 to 2,000 pounds (LTL). | Roadway interchanging with Red Ball at Dallas, Tex. Thereto with CTAT, Greenville, and Southeastern | Wants faster service. Allows 7 days' lead time from the Carolinas | |
| 264. (785) Permanente Corporation, San Francisco, Cal. Liquid plastic | From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volumes of LTL shipments move to Dallas from Birmingham (140,000 pounds), from Atlanta (20,000 pounds), and from Columbus (100,000 pounds) | Transcon, Mercury, Red Ball, Dixie, and Georgia Highway | Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time | Red Ball. Shipper has limited dock space. |
| 265. (786) The Southern Supply Company, Dallas, Tex. Hardware, and agricultural repair parts | From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volumes of LTL shipments move to Dallas from Birmingham (140,000 pounds), from Atlanta (20,000 pounds), and from Columbus (100,000 pounds) | Transcon, Mercury, Red Ball, Dixie, and Georgia Highway | Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time | |
| 266. (787) Mary of Puddin Hill, Greenville, Tex. Pecan fruit cakes | From Greenville to points in the Southeast. Total shipments in 1966 equaled 120,000 pounds but this is to all points in the United States. Each shipment weighs between 20 and 200 pounds. Only 5 to 10 percent of all sales to the southeast. Shipper estimates that about 10,000 pounds were shipped into the southeast in 1966 in about 2,500 individual shipments. | MKT, Red Ball, Central, and Tankard | Most of shipments occur the last quarter of each year. Needs faster and reliable deliveries for Christmas rush. Carriers have lost shipments in the past | Brannan. |
| 267. (788) T.A. Littleton & Sons, Mobile Falls, Tex. Assembled iron steel buildings | From Birmingham, Ala., to points in Texas. Receives 30,000 pounds a month from Birmingham. Shipments weigh 8,000 to 30,000 pounds | Mercury, Campbell, ICX, Jackson, Tamarack, Red Ball, and Eagle. | Wants single-line service to reduce delays because shipper usually has a completion deadline to meet. Allowing 7- to 10- days lead time out of Birmingham. Wants proposed third-morning service. Wants a faster joint-line service. | Red Ball. |
| 272. (810) Kangaire Corp., Cleburne, Tex. Air-conditioning units | From Cleburne to points in Arkansas, Mississippi, and Alabama. Ships up to 1,000 shipments a month to above destinations. Each shipments weighs about 2,000 pounds | Central, Strickland, Jones, and Red Ball | | Strickland. There are several existing carriers which can provide the ... service ... in either single or joint-line operations. Proposed service would still give shipper a three-line haul. |
| 273. (811) San Antonio, Austin, Fort Worth, Irving, Garland, and Corpus Christi, Tex. | See shipper under Louisiana heading | | | |
| 274. (812) Dwight Heritage, Tex. | See shipper under Arkansas heading | | | |
| 275. (813) 30 others | See shipper under Pennsylvania heading | | | |





Summary of evidence of supporting shippers—Continued

TEXAS—Continued

| Shipper, location and commodities | Origin, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
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| 253. (769) Texas Tuffin Co., Waco, and Amarillo, Tex. Floor gaps and carpet sweepers | Inbound from Atlanta, Ga., to shipper's facilities at Waco and Amarillo. Between January 1966 and October 1966 shipper received over 100 shipments from Atlanta weighing from 85 to 1,000 pounds with an average weight of 305 pounds | Red Ball, Red Arrow, S.W. and Transcon. | Wants faster deliveries | Red Ball. Shipper had never heard of Roadway and was unaware of the fact that it has service into and Amarillo from Atlanta |
| 254. (770) Brooks Boat Company, Inc., Broome, Tex. Footwear | From Broome to points in Arkansas Highway 61 and to points in Mississippi, Alabama, and Georgia. Shipments are LTL weighing from minimum to 4,500 pounds. | Central | Wants faster delivery | Strickland. Supports Strickland from Dallas to destination points. Shipper will use Cantrell from Broome to Dallas. Strickland proposed service is no different from several existing operations with authority out of Dallas. Shipper already has a ... service. |
| 255. (771) Jones Bane Company, Amarillo, Tex. Twine, pigs, and tube fittings | See shipper under Oklahoma heading | | | |
| 256. (772) B Small Brothers, Inc., Jackson ville, Tex. Clothing | From Atlanta, Ga., Birmingham, Ala., to Jacksonville. Ships between 1,000 and 2,000 shipments a year to above points. Each shipment weighs between 100 and 150 pounds (LTL). | Transcon, Mercury, CTAT, and Red Ball | Current service is unsatisfactory | Red Ball. No specific complaints or examples of inconsistencies set forth. |
| 257. (773) Industrial Supply Co., Wichita Falls, Tex. Oil and gas machinery | From Birmingham, Ala., to shipper's stores at Wichita Falls, Electra, Kemmy, Throckton, and Jacksboro, Tex. Collectively, about 5,000 pounds moves monthly to the destination points | Mercury, Red Ball, ICX, and Merchants | Current service is too slow. Wants ... red time of 10- to 14 days from Birmingham | Red Ball. It appears that shipper does not always specify marriage. No definite complaints or examples of inconsistencies set forth. |
| 258. (774) Whitehouse Flexible Corporation, Evergreen, Tex. Liquid plastic | From Marietta, Ga., to Evergreen. Receives 3 shipments a month with an average weight of 2,500 pounds a shipment. From Evergreen to unnamed points in the southeast. No volume figures presented | Atlanta Motor, Dyker Brown, Central, Strickland, Johnson, Eastern, Roadway, STT, DTA, and Brannon | Present service is too slow. Wants a faster joint-line service. Average transit time is 5.6 days, including weekends. Wants 3-day service. | Strickland. Roadway serves Marietta directly and offers 2-day service to Evergreen. |
| 259. (775) Lubbock Manufacturing Company, Longview, Tex. Lead blankets, blankets, cables and bundles | From points in North and South Carolina to Greenville. Receives 50 to 60 shipments a month weighing from 400 to 2,000 pounds (LTL). | Roadway interchanging with Red Ball at Dallas, Tex. Thereto with CTAT, Greenville, and Southeastern | Wants faster service. Allows 7 days' lead time from the Carolinas | |
| 260. (776) Permanente Corporation, San Francisco, Cal. Liquid plastic | From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volumes of LTL shipments move to Dallas from Birmingham (140,000 pounds), from Atlanta (20,000 pounds), and from Columbus (100,000 pounds) | Transcon, Mercury, Red Ball, Dixie, and Georgia Highway | Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time | Red Ball. Shipper has limited dock space. |
| 261. (777) Johnson Bane Company, Amarillo, Tex. Twine, pigs, and tube fittings | From Birmingham, Ala., to Amarillo. Receives eight shipments a month, each weighing about 1,000 pounds LTL. | Transcon, CTAT, interlining with T.C.K., Cardinal, and Red Ball. | Wants second-morning service out of Birmingham as 80 programs. Allows a lead time of 7 weeks. Wants proposed 3-day service. Believes Red Ball will give faster service. Wants 1-to-2-day faster service | Red Ball. Transcon offers single-line service from Birmingham to Amarillo. Red Ball |
| 262. (778) B Small Brothers, Inc., Jackson ville, Tex. Clothing | From Atlanta, Ga., Birmingham, Ala., as gateways to points in Texas. In June 1966 company received 251,361 pounds at its Jacksonville warehouse and received same amount deliveries/ship of its 51 stores located at other points in Texas during same period. This is representative of company's inbound monthly traffic. | Red Ball, H.P.T. SWT, and I.M.T. | Believes Red Ball will give faster service. Wants 1-to-2-day faster service | Red Ball |
| 263. (779) King Candy Company, Fort Worth, Tex. Candy | From Fort Worth to points in Mississippi. Ships between 1,000 and 2,000 shipments a year to above points. Each shipment weighs between 100 and 150 pounds (LTL). | Red Ball and Jones | Wants Strickland's second-morning service. Too many delayed shipments with present service. Presently allowing 8-to-10-day lead time to Jackson | Strickland. Shipper no used refrigerated service during the summer months. Strickland cannot offer such service. Present delivery time is 5-to-10 days. Brown and Johnson. Has single-line carriers to most points in Alabama and Georgia. Has one single-line service to South Carolina. Has Strickland single-line service to Maryland and Delaware. Service to Memphis is described as satisfactory. Strickland. Strickland has single-line authority from Memphis to Greenville. This application removes Atlanta gateway. Shipper indicates that the present service can be improved. Shipper has not heard of Taylor or Bonham. Red Ball. East Texas carries the following Texas points direct: from Birmingham, Marshall, Tyler, Longview, Henderson, Suffolk, Kilgore, Carthage, Turbertown, and Gade. Red Ball. Report routes the inbound traffic and they do not support Red Ball. |
| 264. (780) Hammond Richwood, Inc., Greenville, Tex. Lingerie | From points in North and South Carolina to Greenville. Receives 50 to 60 shipments a month weighing from 400 to 2,000 pounds (LTL). | Roadway interchanging with Red Ball at Dallas, Tex. Thereto with CTAT, Greenville, and Southeastern | Wants faster service. Allows 7 days' lead time from the Carolinas | |
| 265. (781) Permanente Corporation, San Francisco, Cal. Liquid plastic | From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volumes of LTL shipments move to Dallas from Birmingham (140,000 pounds), from Atlanta (20,000 pounds), and from Columbus (100,000 pounds) | Transcon, Mercury, Red Ball, Dixie, and Georgia Highway | Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time | Red Ball. Shipper has limited dock space. |
| 266. (782) The Southern Supply Company, Dallas, Tex. Hardware, and agricultural repair parts | From Birmingham, Ala., Atlanta, Ga., and Columbus, Ga., to Dallas. Annually the following volumes of LTL shipments move to Dallas from Birmingham (140,000 pounds), from Atlanta (20,000 pounds), and from Columbus (100,000 pounds) | Transcon, Mercury, Red Ball, Dixie, and Georgia Highway | Wants faster and more consistent service. Prefers single-line service. Wants to eliminate 1 day of transit time | |
| 267. (783) Mary of Puddin Hill, Greenville, Tex. Pecan fruit cakes | From Greenville to points in the Southeast. Total shipments in 1966 equaled 120,000 pounds but this is to all points in the United States. Each shipment weighs between 20 and 200 pounds. Only 5 to 10 percent of all sales to the southeast. Shipper estimates that about 10,000 pounds were shipped into the southeast in 1966 in about 2,500 individual shipments. | MKT, Red Ball, Central, and Tankard | Most of shipments occur the last quarter of each year. Needs faster and reliable deliveries for Christmas rush. Carriers have lost shipments in the past | Brannon. |
| 268. (784) T.A. Littleton & Sons, Mobile Falls, Tex. Assembled iron steel buildings | From Birmingham, Ala., to points in Texas. Receives 30,000 pounds a month from Birmingham. Shipments weigh 8,000 to 30,000 pounds | Mercury, Campbell, ICX, Jackson, Tamarack, Red Ball, and Eagle. | Wants single-line service to reduce delays because shipper usually has a completion deadline to meet. Allowing 7- to 10- days lead time out of Birmingham. Wants proposed third-morning service. Wants a faster joint-line service. | Red Ball. |
| 269. (785) Kangaire Corp., Cleburne, Tex. Air-conditioning units | From Cleburne to points in Arkansas, Mississippi, and Alabama. Ships up to 1,000 shipments a month to above destinations. Each shipments weighs about 2,000 pounds | Central, Strickland, Jones, and Red Ball | | Strickland. There are several existing carriers which can provide the ... service ... in either single or joint-line operations. Proposed service would still give shipper a three-line haul. |
| 270. (786) San Antonio, Austin, Fort Worth, Irving, Garland, and Corpus Christi, Tex. | See shipper under Louisiana heading | | | |
| 271. (787) Dwight Heritage, Tex. | See shipper under Arkansas heading | | | |
| 272. (788) 30 others | See shipper under Pennsylvania heading | | | |

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Summary of evidence of supporting shippers—Continued

VIRGINIA

| Shipper, location and commodities | Origins, destinations, volume, type and frequency of traffic | Existing services utilized | Reasons for supporting application | Application supported and remarks |
|---|---|---|---|---|
| 1. (XII) A. H. Robins Co., Richmond, Va. Pharmaceuticals | From Richmond, Va., to points in Mississippi and to a warehouse in Dallas, Tex. 75 traffic to Dallas, 15% to Mississippi. | Joint-line to Mississippi. Originating carriers are Herrin, Johnson, and Overnight. Connecting carriers are Viking, Campbell, and West Dallas. traffic is handled in joint-line service by Herrin, Nelson, Ben Hur, CTAP, Herrin, and Southeastern. | Complained of slow deliveries. Shipper has expanding markets. It needs emergency expedited service. Shipper wants 2- or 3-day single-line service. | Herrin and Johnson. Hendrey has single-line service to Dallas, but shipper refuses to use it because it failed to make pickups in past. |
| 2. (XIV) Pulp Miller Products Corporation, Richmond, Va. Bag drugs, insecticides, food supplements, petroleum coffee, soap, and cleaning compounds. | From Richmond between 12/31/65 and 7/15/66, shipper had movements to Kansas City, Shallis, Springfield, Mt. Lambs, and Jeffrey, Mo.; Port Pulk and Monroe, La.; Topeka, Kans.; Houston and Dallas, Tex.; and Little Rock, Ark., LTL and TL shipments. | Herrin originates shipper's traffic and interlines it at Memphis, Tenn., and Birmingham, Ala. Dixie also originates the traffic and interlines it at Atlanta, Ga. Overnight. | Wants 2- or 3-day service on TL shipments and 4- to 5-day service on LTL shipments. Wants direct service to reduce damage. | Herrin and Johnson. |
| 3. (XIV) Titmus Optical Co., Inc., Petersburg, Va. Lens blanks, spectacle frames, and optical instruments. | From Petersburg during June and July 1966 shipper had movements (supposed to be percent of all movements handled by motor common carriers in the involved territory during this period) to Dallas, Beaumont, Shallow, San Antonio, Corpus Christi, Fort Worth, Crosby, Amarillo, and Longview, Tex.; Ada and Oklahoma City, Okla.; Little Rock and North Little Rock, Ark.; Shreveport and New Orleans, La.; and Jefferson City and Kansas City, Mo. | Herrin with connecting carriers and parcel post. | Has experienced difficulties in meeting competition due to delays in transit. Claims direct service to reduce damage. | Herrin and Johnson. |
| 4. (XIV) Clark Gum Company & Phillip Morris, Inc., Richmond, Va. Tobacco products | From Richmond to Shreveport, La.; Little Rock, Ark.; Houston and Ft. Worth, Tex., and Kansas City, Kans. During January 1967 shipper had nine shipments to the above points, each shipment weighed about 20,000 pounds. | Herrin, Hendrey, Overnite, Transcon. | Wants improved service. Claims Hendrey's loaders are not reliable. On TL shipments load time of 3 days to Shreveport is allowed; 2 to 4 days to points in Texas, Arkansas, and Missouri. Shipper has had difficulty in obtaining timely pickup service and in having interlining carrier accept its traffic at specified gateways. | Herrin. Several interline connections available to shipper. |
| 5. (XIV) Richmond Engineering Co., Inc., Richmond, Va. Heavy machines and tanks. | From Richmond, Va., to points in Texas, Louisiana, and Mississippi. From 2/4/66 to 1/20/66 shipper had 10 LTL shipments. Weight range 70 to 10,000 pounds. | Herrin, Superior, Trucking, ERC, Hendrey, Jetco, Transcon, Johnson. | Wants faster single-line service. | Herrin. Transcontinental and Hendrey offer single-line service to some of the involved points. Herrin and Ryder can render joint-line service to some of the involved points. Req. open top or flat bed equipment. |

114 M.C.C.





## APPENDIX F

*Population*[1]

| | 1960 census | 1970 census |
|---|---|---|
| *Southwest* | | |
| Arkansas | 1,786,272 | 1,886,210 |
| Colorado | 1,753,947 | 2,178,176 |
| Louisiana | 3,257,022 | 3,564,310 |
| New Mexico | 951,023 | 1,014,979 |
| Oklahoma | 2,328,284 | 2,498,378 |
| Texas | 9,579,677 | 10,989,128 |
| *Southeast* | | |
| Alabama | 3,266,740 | 3,373,006 |
| Florida | 4,951,560 | 6,671,162 |
| Georgia | 3,943,116 | 4,492,088 |
| Kentucky | 3,038,156 | 3,160,555 |
| Mississippi | 2,178,141 | 2,158,872 |
| North Carolina | 4,556,155 | 4,961,832 |
| South Carolina | 2,382,594 | 2,522,881 |
| Tennessee | 3,567,089 | 3,838,777 |
| Virginia | 3,966,949 | 4,543,249 |
| *Middle Atlantic and New England States* | | |
| Connecticut | 2,535,234 | 2,987,950 |
| Delaware | 446,292 | 542,979 |
| Maryland | 3,100,689 | 3,874,842 |
| Massachusetts | 5,148,578 | 5,630,224 |
| New Hampshire | 606,921 | 722,753 |
| New Jersey | 6,066,782 | 7,092,597 |
| New York | 16,782,304 | 18,016,615 |
| Pennsylvania | 11,319,366 | 11,669,565 |
| Rhode Island | 859,488 | 922,461 |
| *Midwest* | | |
| Kansas | 2,178,611 | 2,322,173 |
| Missouri | 4,319,813 | 4,636,247 |

[1]Populations are taken from the 1981 and 1971 editions of *Rand McNally Road Atlas*.

## APPENDIX G

*Protestants*

Of the 60 protestants remaining in this proceeding for which appearances were entered, evidence was presented on behalf of 48 of them through the testimony of 62 witnesses and numerous exhibits. This is summarized as follows:

HOLLOWAY MOTOR EXPRESS, INC. (HOLLOWAY) - GADSDEN, ALA.

*Protest:* - The Bowman application insofar as it seeks authority for the transportation of general commodities between Birmingham, Ala., on the east and Topeka, Kans., Kansas City, Kans., and Kansas City, Mo., on the west.

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*Operations:* - Insofar as this application is concerned Holloway is authorized to transport over irregular routes:

Tires, tire fabrics, tire treads, and related items generally between Topeka, Kans., and points within 10 miles of Topeka, Kansas City, Kans., Kansas City, Mo., and points in Missouri within 10 miles of Kansas City, on the one hand, and, on the other, Birmingham, Decatur and Gadsden, Ala., Cedartown, Rockmart, Cartersville and Atlanta, Ga., and points within 10 miles of Atlanta, and Memphis, Tenn.; also

Paper and printed forms from Topeka to Birmingham and Gadsden, also

Grain, grain products, grain byproducts, animal and poultry feeds and ingredients thereof, generally from points in Kansas and Missouri (except St. Louis and its commercial zone and certain other areas) and from Alton, Ill., to points in Alabama north of a line extending along U. S. Highway 84 from the Mississippi-Alabama State line to junction U. S. Highway 331 near Opp, Ala., thence along U. S. Highway 331 to junction U. S. Highway 80 at Montgomery, thence along U. S. Highway 80 to the Alabama-Georgia State line, and to points in Georgia north of U. S. Highway 80; also from Alton, Ill., to points in Tennessee; and from Vernona, Mo., to Knoxville, Tenn.

*Interest:* - Insofar as this protest is concerned, Holloway maintains terminals at Gadsden and Topeka. Its principal shipper is Goodyear Tire and Rubber Company and its road equipment (27 over-the-road tractors and 53 van trailers) were purchased especially to meet the needs of that shipper. In 1966 Holloway's operating revenue was $965,784 of which 71 percent was derived from the Goodyear account.

The traffic managers of the Goodyear mills at Cedartown, Rockmart and Cartersville, Ga., on Friday of each week give Holloway a schedule of pickups for the following week. At Gadsden pickup orders generally are placed in the afternoon prior to the requested pickup, but at times on much shorter notice. Holloway holds out second day service in both eastbound and westbound operations on truckload shipments. About 60 percent of the shipments are truckload. Less-than-truckload shipments are accumulated until 12,000 to 18,000 pounds are available for transportation. Holloway's shippers are aware of this practice and have made no objection to it.

Eastbound Holloway transports grain, grain products, feed, etc. The shippers of these products call in their requirements to the Topeka office from which the trucks are dispatched. The major portion of the eastbound backhaul is of flour from Kansas points to wholesalers and bakeries in Georgia and Alabama. Availability of equipment for this eastbound freight is dependent upon the westbound Goodyear shipments. In 1966 Holloway transported 2,550 shipments westbound and 1,800 eastbound. Six of the eastbound shippers who account for approximately 22 truckload shipments per week, appeared on behalf of the Holloway protest to urge the necessity of having Holloway's service available to them for the satisfactory movement of their products. They are completely satisfied with the service Holloway affords and they know of no other single-line service available to meet their needs. A considerable amount of their freight is comprised of agricultural commodities for which no certificate is necessary.

The Goodyear witness who supported the Bowman application for service to Kansas City and Topeka found the Holloway service satisfactory, but was fearful of what might happen if there was a change in ownership of Holloway. He admitted that if the Bowman application were granted it is likely he would divert 50 percent of the freight from Holloway to Bowman. All of the westbound and a large portion of the eastbound





traffic of Holloway would be subject to diversion with the grant of the Bowman application.

CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE (CONSOLIDATED)[1] - AND AS OPERATOR OF SOUTHERN-PLAZA EXPRESS, INC. (SOUTHERN PLAZA) - MENLO PARK, CALIF.

*Protest:* - The Bowman application especially for service between the Southwest and eastern areas such as between Houston, Fort Worth, Dallas and Kansas City in the southwest area and Washington, Baltimore, Wilmington, Philadelphia, Newark, Paterson, South Plainfield and New York City in the eastern area and extending on into Connecticut and Massachusetts.

*Operations:* - The Consolidated system maintains terminals at all of the above points except Washington and also at other points in Pennsylvania, New York, Connecticut and Massachusetts which are affected by this application. It operates as a general commodity carrier from coast to coast. In 1966 its operating revenue was just under $178 million with an operating ratio of 91.3 percent.

*Interest:* - From its terminals in Texas, Oklahoma and at Fort Smith, Ark. (Southwest division), to its Atlantic division (which embraces its terminals in the New York City area, Philadelphia, Baltimore, Wilmington, Wilkes-Barre and York), Consolidated transported about 9.3 million pounds of freight during the first 4 months of 1967. Westbound from the Atlantic division to the Southwest division it transported 13.8 million pounds during the same period. Consolidated has established service standards for its operations. Between Houston, Dallas and Fort Worth, on the one hand, and, Baltimore, Wilmington, Philadelphia and the northern New Jersey points on the other, Consolidated holds out a five day service, and a six day service between those southwestern points and New York City or Washington, D. C. For the year 1966 however, its on time performance under these standards ranged from a low of 4.1 percent (Fort Smith to Newark) to a high of 58.9 percent (Philadelphia to Dallas).[2] This protestant is fearful that a grant of the Bowman application may result in a diversion of this Southwest-Atlantic division freight which is important to its system operations.

ILLINOIS-CALIFORNIA EXPRESS, INC. (ICX) - DENVER, COLO.

*Protest:* - The Red Ball and Strickland applications.

*Operations:* - ICX is a common carrier of general commodities operating over a network of routes which extend between Chicago, St. Louis and Dallas on the east and Los Angeles on the west, traversing and serving points in the States of Illinois, Iowa, Nebraska, Colorado, Texas, New Mexico, Arizona and California. Its authority between Dallas and Amarillo substantially duplicates that of Strickland and Red Ball; its authority also duplicates that of Red Ball in certain areas of New Mexico and

[1] In corrected certificate No. MC-42487 (Sub-No. 744), issued January 20, 1971, pursuant to *Consolidated Freightways Corp. of Delaware—Control*, 109 M.C.C. 76 (1969). Consolidated acquired regular-route authority generally between Louisville, Ky., and Cincinnati and Dayton, Ohio, on the north, Winston-Salem and Charlotte, N.C., and Greenville and Columbia, S.C., on the east, Atlanta, Dalton, Columbus, and Macon, Ga., on the south, and Chattanooga, Tenn., on the west.

[2] Exhibit 1521 shows that ontime performance from Fort Smith to South Plainfield, N.J., was 2.0 percent during 1966, and from Kansas City, Mo., to Washington, D.C., it was 73.3 during this period.

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Colorado. It operates 242 road tractors, 1,003 road trailers, and 1,015 local units and service vehicles. It maintains 76 terminals and stations throughout its system.

*Interest:* - ICX offers overnight service on less-than-truckload freight between Dallas, on the one hand, and, on the other, its direct service points in Texas as far west as Amarillo and Lubbock, and second morning delivery on direct service points in New Mexico and Colorado. It interlines freight at Dallas with ETMF, Mercury Freight, Gordons, Herrin, Transcon, Red Ball, Braswell, Jones, Roadway and Strickland. Its interline volume at Dallas with ETMF and Mercury Freight is sufficient to warrant operating through trailer service. ICX also has arrangements with ETMF and Akers for through service with joint rates to the Eastern Seaboard and southeastern territories served by Akers.

ICX solicits the freight of five shippers located at Littleton, Denver, Colorado Springs and Pueblo, Colo., and Amarillo, Tex., who support the Red Ball application, and participates in the transportation of a portion of it. Revenue from the freight it handles between the points and gateways it serves in Texas, Colorado and New Mexico and points and gateways in the South or Southeast which applicants seek authority to serve is important to ICX for the continued operation and maintenance of its service facilities. A new competitive single-line service by Red Ball and Strickland as here proposed in competition with ICX and its connections through the Dallas, Amarillo, and Chicago gateways may cause some diversion of this valuable traffic.

SOUTHWESTERN TRANSPORTATION COMPANY (SW TRANSP.) - TEXARKANA, TEX.

*Protest:* - All applications.

*Operations:* - SW Transp., a railroad affiliated motor carrier, is authorized insofar as this proceeding is involved to transport general commodities over routes in the States of Texas, Arkansas, Tennessee and Missouri extending between Dallas, Fort Worth, Waco and Shreveport on the south to Memphis on the east and St. Louis on the north, serving intermediate points including such points as Little Rock, Magnolia, Camden, Fordyce, Pine Bluff, Jonesboro, and Blytheville, Ark., and Tyler, Corsicana, Greenville and Jacksonville, Tex. It operates 108 road tractors, about 635 trailers of various types, and over 210 pieces of city and service equipment.

*Interest:* - SW Transp. handles most of its traffic moving between southwestern and southeastern points through its Memphis terminal. In December 1966 traffic representing $5,985 revenue was received from Bowman at Memphis and traffic representing $3,177 revenue was given to Bowman. In the same period traffic representing $2,575 revenue was received from Roadway and traffic representing $6,413 revenue was given to that carrier. SW Transp. restricts the handling of shipments of furniture to points on its own line because of difficulties it has experienced in interlining such freight with connecting carriers. It opposes these applications because it is of the opinion that it is able to perform adequate service in conjunction with its connections on freight moving between the southeast and southwest areas.

ALAMO EXPRESS, INC. (ALAMO) - SAN ANTONIO, TEX.

*Protest:* - Portions of the Bowman, Floyd & Beasley, Deaton, Baggett and Johnson applications.

*Operations:* - Alamo is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction





with connecting long-haul carriers. Its operations extend generally between the Galveston-Texas City-Houston area on the east and Brownsville, Laredo and San Antonio on the west. It operates 118 road tractors, 238 semitrailers of various kinds and 184 pieces of city equipment.

*Interest:* - Houston is the major interchange point on the east, and points within 15 miles of Houston have been served by Alamo for years. In addition, Texas City is a very important traffic producing point for Alamo. For example, in April 1967, Alamo originated 77 shipments weighing over 1.4 million pounds which produced a revenue for Alamo of $4,844. In addition Alamo delivers or originates much freight within 15 miles of Houston which it interlines at Houston with connecting carriers. Alamo is of the opinion that it is giving the public a reliable and expeditious service. It has large investments in equipment, terminals and other facilities which are not being operated to capacity and diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area.

CENTRAL FREIGHT LINES, INC. (CENTRAL) - WACO, TEX.

*Protest:* - The Deaton application and portions of the applications of Bowman, Johnson, Floyd & Beasley and Baggett.

*Operations:* - Central is a common carrier of general commodities operating wholly within the State of Texas primarily as a distribution and pickup carrier in conjunction with connecting long-haul carriers. Its routes extend generally between the Beaumont, Orange and Port Arthur area on the east, through the Houston-Galveston area to Brownsville on the south, and through central Texas to Wichita Falls and Denison on the north. It operates 418 tractors, 1,010 trailers of various types, 481 trucks, and 41 pieces of service equipment.

*Interest:* - Central interlines a considerable amount of traffic at such points as Houston and Dallas, much of which is moving to or from points on the routes of the carriers it protests. Competition from new single-line services as proposed by these applicants, particularly in connection with points within the 15 mile radius of Houston and Dallas and such points as Port Arthur, Beaumont, Orange, Texas City, Smiths Bluff, Greenville and Garland, may divert some of this freight from Central Freight. The carrier has a large investment in facilities and equipment which are not being used to capacity. It is the position of Central Freight that with its connections it can offer a more reliable and expeditious service responsive to the needs of the public than can the applicants, and that diversion of this important traffic will result in impairing the quality of its service.

RED ARROW FREIGHT LINES, INC. (RED ARROW) - SAN ANTONIO, TEX.

*Protest:* - The Deaton application and portions of the applications of Bowman, Floyd & Beasley and Baggett.

*Operations:* - Red Arrow is a common carrier of general commodities operating over routes wholly within the State of Texas extending between the Dallas and Fort Worth area and Houston, including points within 15 miles of each of these cities; and also between Houston and points within 15 miles, on the one hand, and, on the other, Orange, Beaumont, Texas City, Port Arthur and Smiths Bluff. It operates 118 tractors and 297 trailers in over-the-road service, and 114 trucks, 36 tractors, and 40 trailers in city equipment.

*Interest:* - Red Arrow interlines freight particularly through the Dallas-Fort Worth and Houston gateways including freight moving to and from points in the East and

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Southeast served by the applicants it is protesting. Its position is substantially the same as that of Central Freight and Alamo.

EAGLE MOTOR LINES, INC. (EAGLE) - BIRMINGHAM, ALA.

*Protest:* - The Bowman and Floyd & Beasley applications.

*Operations:* - Eagle is an irregular route common carrier primarily of specific commodities operating over a large area of the United States. Over 95 percent of its shipments are in truckload quantities and 95 percent of the freight handled can be classified generally as iron and steel articles, pipe, or machinery. It operates about 336 tractors and 534 trailers including vans, flats, telescopic, converters, pole, lowboys, drop frames, I-beams, and refrigerated trailers. Approximately 80 percent of the tractors and 20 percent of the trailers are leased from owner-operators.

Eagle's authority which is in conflict with the protested applications embraces the transportation of general commodities from points in Georgia, Mississippi, and Tennessee to Birmingham and points within 10 miles thereof; iron and steel articles from Birmingham and points within 10 miles thereof to points in Georgia, Mississippi, Tennessee, Texas, Virginia and portions of Louisiana and Florida; contractors' equipment between Bessemer and points in Alabama within 100 miles thereof, on the one hand, and, on the other, points in Georgia, Mississippi, Tennessee and portions of Louisiana and Florida; cotton gin machinery and parts and veneer mill lathes from Birmingham to points in Texas; fiber pipe and iron and steel articles from various points in Alabama including Birmingham to points in Arkansas and Oklahoma; trailers from Birmingham and Haleyville, Ala., and Collins, Miss., to points in the United States and of the same commodities from the destination area to Birmingham.

*Interest:* - It is Eagle's position that even though the applicants it is protesting may limit their extension applications to certain specific points in Texas, Kansas, Missouri, Mississippi or Arkansas, they become new competitors to many other points by virtue of improving their interline capabilities through the new gateways. Accordingly, Eagle noted some 14 million pounds of freight (mostly iron and steel articles) handled by it during May 1967 producing a revenue of $94,000 which it considered to be subject to possible diversion should the applications of Bowman and Floyd & Beasley be granted.

T.I.M.E. FREIGHT, INC. (T.I.M.E.)[1] - LUBBOCK, TEX.

*Protest:* - All applications.

*Operations:* - T.I.M.E. is a common carrier carrier of general commodities operating over routes which extend between San Francisco and Los Angeles on the west, El Paso, Oklahoma City and Atlanta on the south, Kansas City, Chicago and Cincinnati on the north, and New York and Boston on the east. T.I.M.E.'s basic operations are (1) between Middle Atlantic and New England territory, on the one hand, and, on the other, the South, Midwest and West; (2) between the Midwest, on the one hand, and, on the other, the South and Southeast; and (3) between the South and Southeast, on the one hand, and, on the other, the Southwest and West.

[1]Pursuant to supplemental order of the Commission, division 3, in No. MC-F-9822, entered May 26, 1969, T.I.M.E. acquired authority in certificate No. MC-35320 (Sub-No. 109), issued May 8, 1970, to transport general commodities, with the usual exceptions, over regular routes between Tulsa, Muskogee, and Oklahoma City, Okla., on the one hand, and, on the other, San Antonio and Dallas, Tex., As indicated in appendix C, the name of this carrier has been changed.





It maintains 29 terminals at various key locations throughout its routes. It operates 513 road tractors, 1,304 road trailers, 412 city tractors, 376 city trailers, 206 straight trucks and 63 service vehicles. The only protective service offered is by portable heaters. In 1966 its operating revenue was over $57 million and its operating ratio 92.15 percent. Its average length of haul for all of its freight in March 1967 was 1,112 miles.

T.I.M.E. holds out to the public an overnight service on truckload and second day on less-than-truckload freight between Atlanta, on the one hand, and, on the other, Memphis, Little Rock, Springfield and Tulsa. From the eastern terminals such as Boston, New York, Philadelphia, Baltimore, York, Pa., to Memphis the holding out is second day on truckload and third day on less-than-truckload freight and that same service is also held out on the Atlanta to Oklahoma City freight. No evidence was presented as to actual performance under those schedules. Although authority to serve other points in Arkansas, Oklahoma and Missouri is held, T.I.M.E. serves only Little Rock and West Memphis in Arkansas, Oklahoma City and Tulsa in Oklahoma, and Springfield, St. Louis and Kansas City and Missouri, except for an occasional volume shipment. Freight destined to other points in those States which it is authorized to serve is interlined to other carriers for delivery.

*Interest:* - During the month of March 1967 it handled freight between its Atlanta terminal and other terminals here involved as follows:

| Terminals | Number shipments | Pounds | Revenue |
|---|---|---|---|
| Atlanta to Memphis | 2,185 | 1,537,247 | $25,498.00 |
| Memphis to Atlanta | 1,576 | 1,397,890 | 19,628.29 |
| | 3,761 | 2,935,137 | 45,116.29 |
| Atlanta to St. Louis | 2,091 | 1,271,826 | 23,039.55 |
| St. Louis to Atlanta | 2,367 | 2,769,761 | 47,024.39 |
| | 4,458 | 4,041,087 | 72,063.94 |
| Atlanta to Chicago | 775 | 507,052 | 9,968.92 |
| Chicago to Atlanta | 1,185 | 1,054,277 | 23,794.45 |
| | 1,960 | 1,561,329 | 33,758.37 |
| Atlanta to Springfield | 503 | 258,574 | 6,566.74 |
| Springfield to Atlanta | 271 | 208,488 | 5,767.97 |
| | 774 | 463,062 | 12,334.71 |
| Atlanta to Kansas City | 1,860 | 744,460 | 21,929.70 |
| Kansas City to Atlanta | 1,027 | 845,637 | 21,629.28 |
| | 2,887 | 1,590,097 | 43,558.98 |
| Atlanta to Tulsa | 1,033 | 529,695 | 13,843.11 |
| Tulsa to Atlanta | 377 | 203,175 | 5,111.90 |
| | 1,410 | 732,870 | 18,955.01 |
| Atlanta to Oklahoma City | 2,874 | 1,181,055 | 32,862.56 |
| Oklahoma City to Atlanta | 588 | 713,702 | 17,843.84 |
| | 2,962 | 1,844,757 | 50,706.40 |
| Atlanta to Little Rock | 1,259 | 695,563 | 13,153.92 |
| Atlanta to terminals west of Oklahoma City | 5,306 | 4,109,805 | 224,886.04 |
| Terminals west of Oklahoma City to Atlanta | 6,475 | 3,821,068 | 229,803.27 |

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During the month of March 1967, at Memphis T.I.M.E. interlined to Red Ball 4,097 shipments weighing over 3 million pounds producing revenue for Red Ball of $44,156. This freight moved primarily to points in Texas and Louisiana from points in the northern, eastern and southern areas. It gave Herrin 1,070 shipments of similar traffic weighing 540,385 pounds and producing revenue for Herrin of $10,103. Traffic interlined to Southwestern Transp., ETMF and Gordons moved mostly from midwestern and eastern points to Texas points. T.I.M.E. gave SW Transp. 1,311 shipments weighing 809,935 pounds and $15,121 revenue. Its interline to ETMF during this period was 579 shipments weighing 449,034 pounds and producing revenue of $8,861; to Gordons 807 shipments weighing 419,223 pounds and producing revenue of $5,852. Its interline to Jones goes to Missouri and Arkansas points primarily and amounted to 1,583 shipments weighing 987,617 pounds and producing revenue to Jones of $15,856. Some of this latter traffic came from western origins. Protestant is of the opinion that a substantial portion of this freight now interlined at Memphis would be subject to diversion if the applications were granted.

WATSON-WILSON TRANSPORTATION SYSTEM, INC.[1] (WATSON-WILSON) -

*Protest:* - Bowman application.

*Operations:* - Watson-Wilson is a motor common carrier of general commodities over regular and irregular routes in the States of California, Arizona, New Mexico, Colorado, Nebraska, Kansas, Iowa, Minnesota, Illinois, Tennessee, Georgia and South Carolina. It maintains 30 terminals throughout its system and operates in line-haul service 368 tractors and 631 trailers including vans, open tops and refrigerated units. Its operating revenue for 1966 was over $35 million. That of Yellow Transit was nearly $56 million.

*Interest:* - Watson-Wilson's interest concerns primarily service between Kansas City and Topeka, on the one hand, and, on the other, points in Tennessee, Georgia and South Carolina. Between its Kansas City terminal, on the one hand, and, on the other, its terminals in Chattanooga, Tenn., Rome, Atlanta and Augusta, Ga., and Greenville and Charleston, S. C., during the first four months of 1967 it transported 10,130 shipments weighing 13,561,657 pounds and producing revenue of $335,466. By far the largest portion of this freight moved between Atlanta and Kansas City with substantial tonnage also moving between Kansas City and the Chattanooga and Greenville terminals. During the same four month period Watson-Wilson found that it had transported freight for seven of the shippers who testified in support of the Bowman application from Kansas City to points in Tennessee, Georgia and South Carolina for delivery to consignees or interlined to other carriers. These totaled 230 shipments weighing 383,713 pounds and produced revenue of $12,729.

In a one week test period in March 1967, Watson-Wilson transported 269 shipments from its Atlanta terminal to Kansas City for delivery to consignees or connecting carriers. These shipments weighed 312,313 pounds and produced revenue of $8,875. Seventy-eight percent of the shipments were delivered within 3 days of the billing date at Atlanta and 96 percent within four days. During the same test period 84 shipments

[1] At the time of the hearing, Watson-Wilson was controlled by Yellow Transit Freight Lines, Inc. Subsequently, the Commission approved merger of Watson-Wilson into Yellow Transit Freight Lines, Inc., 104 M.C.C. 737, which transaction was consummated December 9, 1968. The name of the surviving corporation has been changed to Yellow Freight System, Inc.





were transported from the Chattanooga terminal to Kansas City weighing 78,720 pounds and producing revenue of $2,123. Seventy-one percent of these shipments were delivered within three days from the Atlanta billing date and 93 percent within four days. From the Greenville terminal there were 42 shipments to Kansas City during the period weighing 29,792 pounds and producing revenue of $967. Forty-eight percent were delivered within three days and 86 percent within four days. During that period 17 shipments were handled from the Augusta terminal to Kansas City, 15 from the Rome terminal and 5 from the Charleston terminal. These 37 shipments weighed an aggregate of 75,491 pounds and produced revenue of $2,242. Thirty-eight percent were delivered within three days of the billing date and 89 percent within four days.

Bowman is one of Watson-Wilson's primary interline carriers in the southeastern area. The protestant is of the opinion that the granting of the Bowman application will jeopardize the traffic it now has between Kansas City and Topeka, on the one hand, and Atlanta and points in the southeastern area on the other.

TRANS-COLD EXPRESS, INC. (TRANS-COLD) - IRVING, TEX.

*Protest:* - All applications.

*Operations:* - Trans-Cold is a common carrier of specific commodities, primarily various kinds of food products, operating between numerous points and areas within the United States. Its general office is at Irving (Dallas), Tex., and it also maintains offices at Brownsville, Tex., Norwalk, Calif., Chicago, Ill., Wichita, Kans., Somerville, Mass., and Jersey City, N. J. It operates 21 pieces of city and service equipment, 153 road tractors and 176 road trailers. All trailers are mechanically refrigerated. It maintains refrigerated storage facilities at Irving and at Jersey City. The preponderance of the company's operation is between the Southwest and East, and from the Southwest to the Southwest. Its primary customers are large chain stores, warehouses, various of the larger foodstuffs manufacturers, and meatpackers.

*Interest:* - Trans-Cold transports substantial quantities of freight requiring protective service from the East to the Southwest, from the Southwest to the East, and from the Southwest to the Southeast (but not in the reverse direction) which it believes may be subject to diversion should these applications be granted. To a much lesser extent there is a possibility of some diversion of its freight moving between the East and West. During the month of May 1967, Trans-Cold transported 254 shipments weighing over 4 million pounds from points in New York, New Jersey, Ohio, Connecticut, Massachusetts and Pennsylvania primarily to points in Texas with some shipments going to points in Oklahoma, Arkansas, and Missouri. In the same period Trans-Cold transported 94 shipments weighing about 2.5 million pounds from the Southwest (all from Texas except one shipment from Oklahoma and one from Arkansas) to points in New York, New Jersey, Maryland, Massachusetts, Connecticut, Pennsylvania and Virginia. During the same period 70 shipments weighing about 2.3 million pounds were transported from points in Texas and New Mexico to points in Alabama, Florida, Georgia, and the Carolinas. From eastern origins to western destinations (Arizona, Utah, Oregon and Washington) in this period Trans-Cold transported 114 shipments weighing 1.4 million pounds.

The great majority of the freight handled by Trans-Cold is in truckload quantities. At Irving, however, it does accumulate shipments of less-than-truckload quantities from Texas origins, and approximately 3 times a week dispatches loads containing such less-than-truckload shipments for southeast and eastern destinations.

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Trans-Cold opposes the granting of any authority that may result in a diversion of any of the above freight from its operations.

MISSOURI PACIFIC RAILROAD COMPANY (MOPAC) - THE TEXAS & PACIFIC RAILWAY COMPANY (T&P) - MISSOURI PACIFIC TRUCK LINES, INC. (MPTL) - THE TEXAS & PACIFIC MOTOR TRANSPORT COMPANY (T&PMT) -

*Protest:* All applications except Roadway and Herrin.

*Operations:* - MoPac controls T&P and they are being jointly operated pursuant to authority of this Commission. Their respective motor carrier affiliates are wholly owned subsidiaries of the parent rail companies. These motor carriers operate over regular routes in the States of Texas, Arkansas, Louisiana, Mississippi, Tennessee, Missouri, Kansas and Nebraska, paralleling the railroad operations to a considerable extent. They operate regular schedules over the system which embraces approximately 17,000 miles of routes, serving approximately 1,700 cities, towns and villages. They maintain major terminals at 30 cities in Texas, 15 in Arkansas, 12 in Louisiana and 11 in Kansas, and together operate about 456 tractors, 542 trailers, and 220 city units.

*Interest:* - MPTL and T&PMT conduct substantial operations over their routes serving the points authorized, and the traffic generated at the points served locally is vitally important to continuation of their operations. They interline freight with other carriers including some of the applicants. During May 1967, they received 90,508 pounds of freight from Bowman at Memphis producing revenue of $2,122. In the same month they interlined to Bowman 156,251 pounds of freight for a revenue of $1,613. They also interlined to Deaton at Memphis 176 pounds of freight with a revenue of $2.43 during the month. During this same period at New Orleans they interlined freight with Deaton, Baggett, Johnson and Strickland aggregating 475,202 pounds and producing revenue of $4,912.

These four protestants are of the opinion that the granting of these applications will not result in the development of any new traffic, but will serve only to dilute traffic and revenue of existing carriers operating in this particular area, and make it more difficult for them to give an adequate and dependable service to the public. These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them.

RED LINE TRANSFER & STORAGE COMPANY, INC. (RED LINE) - PINE BLUFF, ARK.

*Protest:* - The Red Ball, Strickland, Bowman and Jones applications.

*Operations:* - Red Line is a motor common carrier of general commodities operating daily schedules over regular routes out of Memphis, Tenn., Little Rock, Ark., and Greenville, Miss., into all of southeastern Arkansas, and to Monroe and Bastrop, La., with return schedules the same day, but restricted against service between Memphis and Little Rock or between Memphis and Greenville. It maintains 10 terminals on its routes and two call stations. Red Line operates 33 tractors, 60 trailers and 38 pickup trucks. Its operating revenue in 1965 was $1.5 million and its operating ratio was 99.1 percent. It interlines freight at Little Rock, Memphis, Pine Bluff, Crossett, Monroe, and Greenville, including interline with the applicants here protested at one or more of the points.

*Interest:* - During the months of October, November and December, 1966, Red Line received in interline service at Memphis for delivery at points on its routes about 1,000 shipments which originated at or moved through Atlanta or Birmingham and which





produced revenue for Red Line of approximately $8,000. Of these shipments 53 were received from Bowman aggregating 34,868 pounds.

During a three day period (June 6, 7 and 8, 1967) Red Line interlined with Strickland at Little Rock 42 shipments weighing 118,377 pounds and producing revenue for Red Line of $726 and for Strickland of $1,550. Red Line has interlined such freight with Strickland at Little Rock for the past 10 years.

During a one week period May 1 through May 8, 1967, Red Line originated 44 shipments at Memphis which it transported to Lake Village, Ark., producing total revenue of $429. No interline freight is included. This is a daily operation, the truck being routed through Pine Bluff to pick up intrastate shipments from that area going to Lake Village inasmuch as there is insufficient freight for a direct schedule from Memphis. In the same period 39 interstate shipments were originated by Red Line at Lake Village producing a revenue of $164. It also orginated 27 shipments at Greenville, Miss., producing a revenue of $205. During the same week Red Line originated 84 interstate shipments as Crossett, Ark., which were interlined to connecting carriers or delivered by Red Line at Memphis, Little Rock or Monroe and which produced revenues for Red Line of $2,597.

Red Line is of the opinion that a diversion of any of this freight would jeopardize its ability to continue a daily service between its terminal points and serving the intermediate and off-route points. Red Line's present competition for the Lake Village traffic are ABF, Campbell Sixty-Six, Atlas Transit, and MoPac.

GORDONS TRANSPORTS, INC. (GORDONS) - MEMPHIS, TENN

*Protest:* - All applications.

*Operations:* - Gordons is primarily a regular route general commodity carrier with authorized routes extending between Chicago and St. Louis on the north, New Orleans, Gulfport and Mobile on the south, Atlanta, Ga., on the east, and Dallas, Fort Worth, Fort Smith and Kansas City on the west. It is authorized to conduct single-line operations between Atlanta, Ga., and Birmingham, Huntsville and Decatur, Ala., on the one hand, and, on the other, Memphis, Kansas City, St. Louis, Chicago, Dallas, Fort Worth, Little Rock, Fort Smith and the Mississippi points of Greenville, Greenwoood, Cleveland and Indianola; also between Chicago and St. Louis, on the one hand, and, on the other, Jackson and Gulfport, Miss., and Baton Rouge, New Orleans and other Louisiana points. It maintains 17 company terminals and 5 agency terminals throughout its system. It operates 309 tractors, 815 trailers of various types, and 812 city equipment units. In 1966 its operating revenue was about $31.4 million with an operating ratio of 91.8 percent.

Gordons is predominantly a less-than-truckload carrier. In 1966, it transported 1,674,816 less-than-truckload shipments and 26,758 truckload shipments. Of the less-than-truckload shipments handled, 40.1 percent were minimum rated and 71.8 percent weighed less than 500 pounds. The less-than-truckload shipments accounted for 72.6 percent of its operating revenue. 68.8 percent of the total shipments were transported in joint-line service producing 55.2 percent of the revenue. Gordons interlines freight with short-line operators at its major terminals which freight originates at or is terminated at numerous points Gordons is authorized to serve. This is especially true where the volume of freight fails to warrant daily schedules, and accumulation of an adequate volume would result in delay in handling the freight.

In like manner, Gordons may operate a certain number of schedules between terminals daily, but if there is insufficient freight to warrant dispatching one of the

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schedules the freight may be held a day for additional freight to round out the trailer load. In this connection Gordons considers traffic volume as the key to establishing service standards. Where there is sufficient freight to load a through trailer to destination the freight moves faster than if loaded to a break-bulk point. In some instances it is advantageous both from the standpoint of economy and service to use every-other-day through schedules rather than daily schedules over a break-bulk point.

Gordons has established certain service standards which it holds out to the public. It has found that there are very few complaints regarding service if freight is delivered not more than one day beyond the service standard. These standards as pertinent to operations here considered include second day service from Atlanta to Dallas, and from Chicago and St. Louis to Atlanta and Birminghma; third day service from Kansas City to Atlanta and Birmingham, from Birmingham to Dallas, and from Chicago to Baton Rouge, New Orleans, other Louisiana points, Gulfport and Mobile. An examination of Gordons' records for a one week test period in May 1966, covering 5,694 shipments handled between the above points[5] disclosed "on time" performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard.

The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. An analysis of its traffic for the year 1966 discloses that at its Atlanta terminal 89.6 percent of the outbound and 95.1 percent of the inbound freight is involved in these proceedings, and is subject to diversion if these applications are granted; at Baton Rouge 83.5 percent of the outbound and 81.2 percent of the inbound freight is involved; at Birmingham 98 percent of the outbound and 98.5 percent of the inbound freight in involved; at Dallas it is 24.8 percent of the outbound and 43.7 percent of the inbound freight; at Gulfport 89.7 percent of the outbound and 90.6 percent of the inbound freight; at Jackson 59 percent of the outbound and 54.4 percent of the inbound freight is involved; at Kansas City 42.1 percent of the outbound and 44.3 percent of the inbound freight is involved; at Mobile 86 percent of the outbound and 91.2 percent of the inbound is involved; at New Orleans 69.5 percent of the outbound and 87.7 percent of the inbound freight is involved.

Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. Gordons serves many of the shippers who testified in these proceedings on behalf of certain of the applicants. Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles a total of 1,045,560 miles, much of it between points involved in these applications.

### SUPPORTING GORDONS' PROTEST

Five motor carriers who were not themselves protestants in these proceedings testified in support of Gordons' protest. Ellis Trucking Company, Inc., of Indianapolis, Ind., operates as a common carrier of general commodities over regular routes extending between Memphis, on the one hand, and, on the other, numerous points in Kentucky, Indiana, Ohio and Michigan, with terminals at Memphis, Tenn., Cincinnati and Dyaton, Ohio, Indianapolis, Anderson, Marion, and Fort Wayne, Ind., Detroit, Pontiac, Flint, Saginaw, Lansing and Jackson, Mich. Its operating revenue for 1966 was over $12 million. Roadway serves all the above points. At Memphis Ellis interlines primarily with Gordons, Braswell and Herrin. In May 1967 Ellis from the above terminals interlined at Memphis 1,573 shipments weighing over 2 million pounds destined to New Orleans, Baton Rouge, Mobile, Gulfport and Biloxi. All of this freight would be subject to diversion to the proposed Roadway single-line service.

[5] Excludes bills with no delivery date, and those involving unusual circumstances such as "will call" shipments, C.O.D.'s or order notify shipments, and redeliveries.





Southern Forwarding Company of Memphis is a motor common carrier of general commodities operating over regular routes in Tennessee and Kentucky primarily between Louisville and Memphis via Nashville. Its operating revenue for 1966 was over $1.7 million. In January 1967 Southern Forwarding handled 40 shipments weighing 121,860 pounds from Louisville destined to New Orleans and 60 shipments weighing 46,494 pounds from Louisville destined to Baton Rouge which were interlined at Memphis. This traffic would be subject to diversion to Roadway. Also subject to diversion to Bowman would be freight from Nashville to New Orleans and Baton Rouge.

Mid-South Transports, Inc., of Memphis, is a motor common carrier of general commodities in the State of Tennessee operating generally between Memphis and Nashville and between Memphis and Clarksville serving various intermediate points. Its operating revenue for 1966 was approximately $2.5 million. In the first three months of 1967 Mid-South originated 121 shipments weighing 296,141 pounds at Clarksville, Tenn., destined to points proposed to be served by Roadway and during the same period 94 shipments weighing 40,610 pounds at Nashville destined to the same Gulf Coast area. This freight was interlined to connecting carriers at Memphis. The two shippers of this freight testified in support of the Roadway application and the freight would be subject to diversion by that carrier. Similarly, during the period from October 10 to October 22, 1966, Mid-South participated in the movement of 121 shipments weighing 117,295 pounds between points in Tennessee and Kentucky including Nashville and Clarksville, on the one hand, and, on the other, points in Louisiana and Mississippi which also would be subject to diversion.

Wilkerson Freight Lines, Inc., of Moss Point, Miss., is a common carrier of general commodities operating over a regular route between Pascagoula, Miss., and Mobile, Ala., serving all intermediate points and the off-route point of Escatawpa. It operates 9 tractors and 16 trailers. Less-than-truckload traffic is handled on its own equipment. Truckload freight for the International Paper Company plant at Moss Point, Miss., is handled in conjunction with Bowman, Gordons, Cole and Mercury Freight using the connecting line's trailer with the interline being made at Mobile. Forty-five to 60 percent of its traffic is handled for International Paper Company. That company testified on behalf of the Johnson and Bowman applications.

Atlas Transit, Inc., of Little Rock, Ark., is a motor common carrier of general commodities operating over a network of regular routes in Arkansas between West Memphis, Little Rock, El Dorado, Texarkana, Arkadelphia, Pine Bluff, Hot Springs, Conway, Fort Smith, Fayetteville and Springdale. It maintains 15 terminals throughout its routes and operates 19 road tractors, 77 road trailers and 28 city pickup vans. On freight moving to or from Memphis Atlas purportedly interlines with Powell Truck Lines on a through unit and one carrier (for rate purposes) basis. Jones, Herrin, Strickland and Red Ball all operate in Arkansas and Bowman proposes operation in Arkansas. Atlas handles a substantial amount of interstate freight through interline

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especially at West Memphis and Little Rock. This freight is essential to the continued operation of various terminals which provide a necessary service to many small cities and communities in Arkansas. A shift in the interline point from Memphis to Little Rock would either divert freight entirely from Atlas or substantially reduce its portion of the operating revenue.

MERCURY MOTORS INCORPORATED (MERCURY MOTORS) - FORT SMITH, ARK.

*Protest:* - The Bowman application; (also appeared as a witness for Gordons in support of their protest of the Jones, Red Ball and Strickland applications).

*Operations:* - Mercury Motors is a common carrier of general commodities operating over regular routes between Memphis and Fort Smith by way of Little Rock, and beween Memphis and Snow Lake, serving intermediate points and certain off-route points; also over irregular routes between Memphis on the one hand, and points in the west central portion of Arkansas on the other. Its 1966 operating revenue was over $2.7 million. It maintains terminals at Memphis, Fort Smith, Little Rock and Helena.

*Interest:* - During 1966 Mercury Motors received from Bowman in interline service at Memphis 1,408 shipments weighing 1,258,021 pounds and producing revenue for Mercury Motors of $14,228. During the same period it interlined to Bowman at Memphis 231 shipments weighing 1,079,150 pounds and producing revenue for Mercury Motors of $8,764. This freight is subject to diversion to Bowman should the Bowman application be granted.

AKERS MOTOR LINES, INC. (AKERS) - GASTONIA, N. C.

*Protest:* - All applications.

*Operations:* - Akers is a common carrier of general commodities operating over an extensive network of routes between points in Georgia, South Carolina, North Carolina and on up the East Coast through Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. It maintains terminal facilities at 85 cities and operates 183 trucks, 552 tractors, and 1,122 trailers of various types.

*Interest:* - Interline traffic is a vital part of the Akers operation and any diversion of such freight from its lines by virtue of these applications will be detrimental to the carrier and impair the quality of service it is able to give to the public. Akers restricts the application of through rates to not more than a 2-line haul on truckloads and a 3-line haul on less-than-truckload freight, and in the latter instance only when Akers is the intermediate carrier.

MERCURY FREIGHT LINES, INC. (MERCURY FREIGHT) - MOBILE, ALA.

*Protest:* - All applications.

*Operations:* - Mercury Freight is a common carrier of general commodities operating between Birmingham on the north, Mobile and Pensacola on the south, Beaumont, Houston, Dallas and Fort Worth on the west. By certificate dated May 24, 1968, in No. MC-113528 (Sub-No. 12), Mercury Freight is authorized to serve as intermediate and off-route points Baton Rouge, and points within 15 miles thereof, Lake Charles and points within 15 miles thereof, Bay Minette and Jackson, Ala., and Picayune, Miss., and the NASA test site near there. It maintains terminals at Birmingham, Selma, Mobile, Pensacola, Dallas, Fort Worth, Beaumont and Houston. It operates 82 tractors, 168 trailers and 48 pickup trucks. Its 1966 operating revenue was over $4.8 million. In that year it handled 267,109 less-than-truckload shipments and 8,152





truckloads. In 1966, 20 percent of Mercury Freight's total tonnage was local to its line, 66 percent was interline freight either originating or terminating on its lines, and 14 percent was interline freight where Mercury Freight was a bridge carrier. Thus, 80 percent of its freight is interline, including such service with some of the applicants.

Mercury Freight holds out to the public next day delivery between Birmingham and Mobile and between Birmingham and Pensacola; second day service between Birmingham and Houston, Birmingham and Dallas, Mobile and Houston and Mobile and Dallas. Its on time performance under those schedules as determined by records of 7,885 shipments covering a number of one week periods during 1966 ranges from a low of 76.4 percent to a high of 93.8 percent. It also holds out a second day joint-line service between Atlanta and Houston or Dallas.* Mercury Freight is not operating to capacity and is in need of additional freight. In the period from July to December 1966, Mercury Freight dispatched 86 empty trailers from its Pensacola terminal for lack of outbound freight. Similarly, it dispatched 127 empty trailers from Houston for lack of traffic in that six month period. In 1966, 99.2 percent of the individual shipments handled by Mercury Freight were free from any claim for loss or damage and from a revenue standpoint the claim ratio of the company was 1 percent.

*Interest:* - Aside from added competition with its extensive joint-line services which these applicants propose, Mercury Freight's single-line service will be duplicated by one or more of these applications. For example, six of the applicants proposed to duplicate Mercury Freight's single-line service between Birmingham and Dallas, Birmingham and Houston, Birmingham and Beaumont, and Birmingham and Fort Worth. Between Mobile and Dallas, Mobile and Houston, Mobile and Beaumont and Mobile and Fort Worth, four of the applicants propose single-line service duplicating that of Mercury Freight. Between Pensacola and Dallas, Pensacola and Houston, Pensacola and Beaumont, Pensacola and Fort Worth, two applicants proposed single-line service duplicating that of Mercury Freight. And between Selma, on the one hand, and, on the other, Dallas, Houston, Fort Worth and Beaumont, one of the applicants is proposing a new single-line service duplicating that of Mercury Freight.

As previously mentioned Mercury Freight interlines substantial traffic with several of the applicants. In 1966 Mercury Freight interlined to Roadway at Birmingham 1,494 shipments weighing over 2.4 million pounds moving to points in the Roadway system, and received from Roadway 7,588 shipments weighing over 4.9 million pounds. It interlined to Bowman at Birmingham 3,692 shipments weighing over 7.3 million pounds and received from Bowman 2,293 shipments weighing 7.2 million pounds. It interlined to Johnson at Mobile 194 shipments weighing 414,498 pounds and received from Johnson 2,119 shipments weighing 1.6 million pounds. Mercury Freight gave Baggett at Birmingham 4,006 shipments weighing over 4 million pounds and received from Baggett 1,464 shipments weighing over 2 million pounds. It gave Floyd & Beasley 141 shipments weighing 76,904 pounds and received from Floyd & Beasley 2,985 shipments weighing over 1.7 million pounds. It interlined to Deaton for the year 935 shipments weighing over 1 million pounds and received from Deaton 866 shipments weighing 514,165 pounds. It gave Red Ball at Mobile 326 shipments weighing 411,909 pounds and received from Red Ball 43 shipments weighing 79,613 pounds. This freight totaling for the year 1966, 17,358 shipments weighing over 18 million pounds is subject to diversion. Mercury Freight has handled the freight of at

*In No. MC-F-9918, *Mercury Freight Lines, Inc.—Purchase (Portion)—Sam N. Cole* (not printed), decided April 11, 1969, Mercury Freight was authorized to acquire by purchase operating rights extending its authority between Birmingham and Atlanta.

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least 57 of the witnesses testifying in this proceeding. The witness for Mercury Freight also noted that for 100 of the witnesses testifying on behalf of certain of the applicants who ship or receive freight at points within Mercury Freight territory, a check of its records for periods ranging from six months to a year during 1966 failed to disclose that any of them tendered a shipment to Mercury Freight.

HOWARD HALL COMPANY, INC. (HOWARD HALL) - BIRMINGHAM, ALA.

*Protest:* - The Bowman application.

*Operations:* - Howard Hall is a motor common carrier of general commodities operating over irregular routes between Birmingham and points within 65 miles thereof and Montgomery, Ala., on the one hand, and, on the other, points in Georgia south of U. S. Highway 80 and those in Florida north of a line extending from Clearwater through Tampa to the East Coast. It maintains terminals at Birmingham, Jacksonville, Orlando, Pensacola and Tampa from which the surrounding areas are served by peddle runs. Pickup and delivery service is performed for Howard Hall by cartage agents at Daytona Beach, Gainesville, Lake City, Melbourne, Ocala, Panama City, and Tallahassee, Fla., and Anniston, Gadsden, Montgomery, and Tuscaloosa, Al. The company operates 187 trailers of various types, 41 tractors and 27 trucks used in pickup and delivery work, and 64 road tractors. In 1966 it transported 170,288 less-than-truckload shipments and 10,172 truckload shipments and its operating revenue was over $3.7 million.

*Interest:* - In a 12-month period (July 1, 1966-June 30, 1967) Howard Hall's operation between Birmingham and Pensacola produced some $405,000 operating revenue or approximately 10 percent of its total operating revenue. It considers this freight to be subject to diversion by the proposed new Bowman service which will eliminate the circuity involved in its present authority to perform such service. In addition, Bowman is proposing a new service to many points now served by carriers with which Howard Hall interlines freight at Birmingham. This freight also would be subject to diversion to the proposed new single-line Bowman service.[1]

WEST BROTHERS, INC. (WEST) - HATTIESBURG, MISS.

*Protest:* - The Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman and Johnson applications.

*Operations:* - West is a motor common carrier of general commodities operating primarily over regular routes extending between Birmingham, Montgomery, and Mobile, Ala., on the east, New Orleans on the south, and Memphis on the north, the latter point being subject to certain restrictions. Its routes are concentrated in the southern half of Mississippi, and include among its 167 service points in Mississippi, Alabama, and Louisiana such major cities as Jackson, Hattiesburg, Laurel, McComb, Brookhaven, Biloxi, Gulfport, and Pascagoula, Miss., Birmingham, Montgomery, and Mobile, Ala., and New Orleans and surrounding points in Louisiana.[2] It operates 14 terminals within this area. In 1966 its operating revenue was over $6 million. In its

[1]Through its purchase of a portion of the operating rights of Alabama Highway Express, Inc., No. MC-F-9921, consummated August 15, 1968, Bowman now holds operating authority substantially duplicating that of Howard Hall, thus eliminating the basis of this protest.

[2]Subsequent to this hearing, West has received authority to extend its operations to Natchez, Miss., and Baton Rouge, La., subject to certain restrictions. Also subsequent to this hearing, applicant Roadway has acquired control of West. As indicated in appendix C, the name of this carrier has been changed.





business West operates 100 road tractors, 298 trailers, and 123 pieces of city equipment.

*Interest.* - Of the 167 towns that are served directly by West only 58 will not be affected by these applications and those are primarily very small communities, the total population of which aggregates only 59,516. Interline freight is an important segment of West's operations and a considerable amount of interline traffic is handled with these applicants. For example, in a two week period in October 1966, West received over 1.9 million pounds of freight from the 7 applicants it is protesting which it considers subject to diversion. During the first six months of 1967, 53.8 percent of all West's traffic was interlined and 46.2 percent was local to its own lines. Of the interline freight it handles West is of the opinion that from 85 to 90 percent is subject to diversion by these applications. West believes it is rendering a satisfactory and essential service to the public. In a one week period in October 1966, West handled some 6,699 shipments which purportedly would be affected by one or more of these applications. These shipments originated or were interchanged at New Orleans, Jackson, Mobile, Gulfport, Hattiesburg, Laurel, Meridian, Pascagoula, Birmingham, Memphis and Montgomery. 49.3 percent of the shipments were delivered to the consignees or to connecting carriers within one day and 93.7 percent within two days. Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations.

DEATON, INC. (DEATON) - BIRMINGHAM, ALA.

*Protest:* - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

*Operations:* - See under applicants' evidence in the attached report.

Specifically involved are Deaton's operations as a common carrier of general commodities between Atlanta and Birmingham and points within 65 miles of Birmingham, on the one hand, and, on the other, Memphis, New Orleans, and all points in Mississippi; also 27 grants of specific commodities authority. Deaton handles both truckload and less-than-truckload freight. Being an irregular route operator it holds out no firm commitment of scheduled service but informs shippers that normally shipments originating at Atlanta or Birmingham will be delivered in Jackson in the next or second day service.

*Interest:* - Deaton's operations conducted from its terminals at Anniston, Birmingham, Mobile, Atlanta, Columbus, Greenville, Jackson, Natchez, Vicksburg, Memphis and New Orleans are affected by the applications protested. Eight of these terminal operations are conducted by cartage agents. During two one week periods (one in February 1966 and one in March 1967) Deaton billed at the above terminals an aggregate of over 43 million pounds of freight producing revenues for Deaton of $311,242 (Vicksburg terminal was limited to the 1967 period inasmuch as it was only opened early in 1967). A large portion of this freight would be subject to diversion to one or more of the applicants. Deaton often interlines less-than-truckload freight destined to points in Mississippi which it is authorized to serve if the volume of such traffic does not warrant operation. The volume of traffic from Atlanta and Birmingham to New Orleans and points in Mississippi is three times that in the reverse direction. Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations.

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FLOYD & BEASLEY TRANSFER COMPANY, INC. (FLOYD & BEASLEY) - SYCAMORE, ALA.

*Protest:* - Herrin, Roadway, Red Ball, Strickland, Baggett, Bowman, Johnson and Jones applications.

*Operations:* - Floyd & Beasley is a regular and irregular route common carrier of general and specific commodities—the latter being predominantly textile machinery and textile products—in the States of Alabama, Georgia, South Carolina, and Tennessee. Its authority to transport general commodities includes transportation from Atlanta, Ga., Chattanooga, Tenn., and all points in South Carolina to Birmingham, Ala. The authority to transport textile products includes service from 54 Alabama points to points in Alabama, Tennessee, Georgia, and South Carolina.

Floyd & Beasley is primarily a common carrier of textile products, materials and supplies operating over irregular routes (79 percent of its business). It also is a common carrier of general commodities from points in South Carolina, Atlanta and Chattanooga to Birmingham as well as to certain other Alabama points. Its operating revenue for 1967 was over $3.7 million.

*Interest:* - Floyd & Beasley interlines substantial tonnage particularly at Birnigham. On shipments destined to Mississippi, Louisiana, Texas, Arkansas, Oklahoma, Missouri and points beyond, Floyd & Beasley is fearful that its present interline traffic may be diverted to the applicants who would transport the shipments to destinations or to interline points nearer the destinations. Any diversion of its present traffic will seriously affect its financial stability.

BAGGETT TRANSPORTATION COMPANY (BAGGETT) - BIRMINGHAM, ALA.

*Protest:* - Herrin, Roadway, Red Ball, Strickland, Bowman and Jones applications.

*Operations:* - See under applicants' evidence in the attached report.

Baggett maintains terminals at Atlanta, Columbus, Rome, Anniston, Birmingham, Decatur, Gadsden, Huntsville, Mobile, Montgomery, Opelika, Ozark, Selma, Sylacauga, Tri Cities, Tuscaloosa, Union Springs, Pensacola, New Orleans, Gulfport and Chattanooga. Baggett conducts single-line operations between all of these terminal points and serves intermediate points. It is predominantly a delivery or distribution carrier for the long haul carriers serving Atlanta, Chattanooga, Birmingham and New Orleans. Ninety-five percent of its traffic is less-than-truckload.

*Interest:* - During the month of May 1967, Baggett handled between the above terminals 55,623 shipments weighing over 55 million pounds and producing a revenue of $564,217. Of these shipments 26,896 were interline shipments weighing over 26.7 million pounds and producing a revenue of $219,009. One or more of the applicants protested conflict with Baggett's operations to some extent, including a number which would conflict with its explosive operations authorized in some 44 States. The extent of the possible diversion was not computed, but the proposed additional competition is considered to be substantial.

GEORGIA-FLORIDA-ALABAMA TRANSPORTATION CO. INC. (GFA) - DOTHAN, ALA.

*Protest:* - Herrin, Roadway, Red Ball, Floyd & Beasley, Strickland, and Baggett applications.*

*Protest to the Bowman application withdrawn by petition dated September 30, 1968. GFA, in *Georgia-Florida-Alabama Transp. Co. Extension*, 110 M.C.C. 892 (1969), was granted regular-route, general-commodity authority generally over a network of routes extending between Pensacola, Fla., and Mobile, Ala., on the one hand, and, on the other, Jackson, Hattiesburg, Laurel, and Meridian, Miss. The certificate authorizing such operations, No. MC-61788 (Sub-No. 25), was issued June 2, 1971.





*Operations:* - GFA is a common carrier of general commodities operating over regular routes between Atlanta on the north and Pensacola and Mobile on the south serving intermediate points; and operating over irregular routes between points in Mississippi, Alabama and Florida within 75 miles of Bay Minette, Ala. It maintains terminals at Dothan, Andalusia, Atlanta, Pensacola, and mobile and agency stations at Fort Walton Beach, Pascagoula and Eufala. It operates 73 tractors, 162 trailers and 52 pickups. It interlines freight with 84 connecting carriers at Atlanta, Andalusia, Dothan, Mobile, Crestview and Pensacola, including seven of the applicants.

*Interest:* - A substantial amount of the GFA traffic may be subject to diversion by these applications. For example, on May 15, 1967, GFA transported 427 shipments weighing a total of 296,393 pounds between various points on its routes all of which would be subject to diversion if these applications were granted. The record shows that GFA delivered 83.1 percent of these shipments the first day and 98.3 percent by the second day. A similar tabulation for May 19, 1967, shows a total of 440 shipments weighing 222,511 pounds subject to diversion. 88.5 percent of those were delivered the first day and 98.3 percent by the second day.

GFA serves both International Paper Company and Ingalls Shipbuilding Company at Moss Point, Miss. Normally International Paper Company requires through trailer service for its truckload shipments which GFA provides in conjunction with its connecting carriers. GFA also serves Armstrong Cork Company at Pensacola, Fla., which company requires through trailer service in connection with its truckload shipments. Much of this traffic is handled in conjunction with Roadway Express as the interlining carrier at Atlanta. In a 3-month period GFA handled 104 shipments weighing over 2.3 million pounds for Armstrong Cork Company which were interlined at Atlanta. Seventy-one percent was delivered to the interlining carrier the first day and 91 percent by the second day. GFA's interline with Roadway at Atlanta is an important segment of its business. In the 2-month period of September and October 1966, GFA received from Roadway at Atlanta 292 shipments destined to points on its routes for delivery or interline. These shipments weighed 260,076 pounds. Fifty-four percent were delivered the first day and 89 percent by the second day. GFA is not using its equipment to capacity. It is of the opinion that it is performing an adequate service, and believes that diversion of its traffic that may result from a grant of these applications will seriously impair its operations and services.

PILOT FREIGHT CARRIERS, INC. (PILOT) - WINSTON-SALEM, N. C.

*Protest:* - Roadway and Bowman applications.

*Operations:* - Pilot is a common carrier of general commodities and various specific commodities operating in the States of Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Ohio and District of Columbia. It maintains 32 terminals throughout that territory. It operates 455 tractors, 917 trailers and 152 straight trucks. Its operating revenue in 1966 was over $26 million.

*Interest:* - Pilot participates in the transportation of freight between points in the above area and points in the Gulf Coast and Southwestern area proposed to be served by Roadway and Bowman. Atlanta is Pilot's primary gateway point for interchange of such traffic, with the gateways of Fort Oglethorpe and Savannah, Ga., Greenville, S. C., and Charlotte, N. C., handling lesser amounts of traffic. In 1966 Pilot received from interlining carriers at these terminals over 43 million pounds of freight and interlined to other carriers over 47.7 million pounds. This included interlining with four of the applicants, namely, Baggett, Deaton, Herrin and Johnson. Of the other 10

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carriers with which Pilot interlined at these points, nine are protestants in these proceedings.

Pilot is not operating to capacity and in fact, it has an imbalance of freight at Atlanta to the extent of requiring operation of about 20 empty vehicles weekly out of that point. A diversion of freight will be detrimental to Pilot's operations.

THE MASON AND DIXON LINES INCORPORATED (MASON & DIXON) - KINGSPORT, TENN.

*Protest:* - The Bowman application.

*Operations:* - Mason & Dixon is a common carrier of general commodities operating over routes extending between Chicago and Memphis on the west, Birmingham and Atlanta on the south, and Scranton and the New York City area on the north and east. It maintains some 30 terminals throughout this area and operates 187 road tractors, 1,244 trailers, and 246 pickup units. Its operating revenue for 1966 was over $39 million.

*Interest:* - Mason & Dixon handles a large amount of interline freight moving to or from points in Arkansas, Texas, Oklahoma and Mississippi, on the one hand, and, on the other, points on its routes. During the first 24 weeks (6 accounting periods) in 1967, Mason & Dixon transported between its northeast area and the southwestern States as above noted 32,309 shipments weighing 53.4 million pounds and producing revenue of over $1 million. In the same period between the south and southeastern points and the southwestern area it transported 3,986 shipments weighing over 5 million pounds producing revenue of $71,109. Its transcontinental traffic during this period moving between the eastern area and the west coast area amounted to 5,164 shipments weighing about 6.5 million pounds producing revenue of $94,983. A grant of the Bowman application will subject a very substantial portion of this traffic to diversion.

GEORGIA HIGHWAY EXPRESS, INC. (GHE) - ATLANTA, GA.

*Protest:* - The Herrin, Red Ball, Strickland, Baggett, Bowman and Jones applications.

*Operation:* - GHE is a common carrier of general commodities operating over both regular and irregular routes in Alabama and Georgia and over regular routes in eastern Tennessee. It maintains terminals at 20 points in Georgia, 10 in Alabama and 3 in Tennessee. GHE operates 280 tractors, 788 trailers and 198 pickup units. Its operating revenue for 1966 was over $15.7 million.

*Interest:* - GHE fears that granting of these applications will result in diversion of interline traffic it is now handling to or from the territory for which applicants are seeking authority. GHE maintains interline facilities to handle this traffic at Atlanta, Birmingham, Mobile and Chattanooga.

CAMPBELL SIXTY-SIX EXPRESS, INC. (CAMPBELL SIXTY-SIX) - SPRINGFIELD, MO.

*Protest:* - All applications except Bowman's.[10]

*Operations:* - Campbell Sixty-Six is a common carrier of general commodities operating over routes extending between Chicago on the north, Kansas City and Tulsa on the west, Birmingham and Mobile on the east, and New Orleans and Baton Rouge

[10]Protest of Bowman application withdrawn subsequent to hearing.





on the south.[11] It operates 30 terminals and 2 agency stations throughout its routes which include 12 in Mississippi, 7 in Missouri, 4 in Arkansas, 2 each in Kansas, Louisiana and Alabama, and 1 each in Illinois, Tennessee and Oklahoma. It operates 374 tractors, 738 trailers and 200 pickup and delivery trucks. Its operating revenue in 1966 was almost $21.8 million.

*Interest:* - Some traffic moving to or from each of Campbell Sixty-Six's terminals is subject to diversion by these applications. For most of the terminals new direct single-line competitive services are being proposed. Campbell Sixty-Six is of the opinion that it is performing a reasonably adequate and satisfactory service and is capable of handling additional freight. Its offered service between Birmingham and its direct points in Mississippi varies from overnight to second day and between Birmingham and Missouri points second or third day service is offered. Data reflecting operations during certain test periods reflect on time performance on shipments handled ranging from 71.0 to 82.4 percent. Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants. However, in this connection it is to be observed that Campbell Sixty-Six has asked connecting carriers not to tender it freight for certain Mississippi points it is authorized to serve.

Shippers Express, a motor common carrier of general commodities operating within the State of Mississippi between Jackson, on the one hand, and, on the other, points in Mississippi within 100 miles of Jackson, appeared as a witness supporting the protest of Campbell Sixty-Six as well as those of certain other protestants. Shippers Express serves primarily as a distribution carrier on interstate traffic interlined with other carriers including some of the applicants at Jackson. It maintains terminals at Jackson, Natchez, Vicksburg, Greenville and Philadelphia, Miss. It operates 12 tractors, 26 trailers and 23 pickup trucks.

JACK COLE COMPANY (JACK COLE) - DIXIE HIGHWAY EXPRESS, INC. (DIXIE) - BIRMINGHAM, ALA.

*Protest:* - All applications.

*Operations:* - Jack Cole and Dixie are motor common carriers of general commodities as well as of specific commodities. Jack Cole controls Dixie and has been operating Dixie since January 1965.[12] Jack Cole's operation extends primarily between

[11]In February 1969, Campbell Sixty-Six received a certificate from this Commission authorizing extension of its operations to Atlanta restricted to the transportation of traffic originating at or destined to or interlined with other carriers at authorized service points on its presently authorized routes in Mississippi and Missouri except Gulfport, Miss., and Kansas City and St. Louis, Mo., and points within the commercial zones of each. (No. MC-75320 (Sub-No. 106)). This certificate was canceled by certificate No. MC-75320 (Sub-No. 150), issued April 23, 1970, authorizing the transportation of general commodities, with exceptions, between Birmingham and Atlanta, serving all intermediate points and the off-route point of Bessemer, Ala., and those located within 5 miles of Birmingham and Atlanta. The Sub-No. 150 rights, which were formerly held by United Motor Freight Terminal, Inc., were authorized to be merged with those of Campbell pursuant to an order of the Commission in No. MC-F-10585, entered November 14, 1969. All of the former's certificates have been canceled. Pursuant to an order of the Commission in No. MC-F-10219, entered November 8, 1968, Campbell was issued a certificate, No. MC-75320 (Sub-No. 144), on April 16, 1969, authorizing the extension of its operations between Tulsa, Okla., and Wichita Falls, Tex.

[12]On November 15, 1967, R. E. Short, who controls Admiral-Merchants Motor Freight, Inc., of Minneapolis, Minn., acquired control of both of these companies pursuant to authority of the Commission in No. MC-F-9871. As indicating in appendix C and appendix D, footnote *, Cole and Dixie have merged and the surviving corporation's name is Jack Cole-Dixie Highway Company.

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numerous Alabama points, on the one hand, and, on the other, points in Tennessee, Indiana, Ohio, a portion of Illinois including Chicago, and the Detroit, Philadelphia and New York City areas. Dixie's operation is over a network of routes primarily between New Orleans, La., and Jackson, Miss., on the west, and Atlanta and Columbus, Ga., on the east, passing through such principal intermediate points as Meridian, Laurel and Hattiesburg, Miss., Anniston, Birmingham, Montgomery, Opelika, Selma and Tuscaloosa, Ala. Together these protestants maintain 28 terminals and agency stations throughout the territory served. They operate a total of 194 tractors and 755 trailers over the road, and for city work, 162 pickups, 142 tractors and 45 trailers. Their combined operating revenue for 1966 was almost $21 million.

*Interest:* - Jack Cole and Dixie handle a substantial amount of freight which would be subject to diversion by one or more of the applicants. In the month of May 1967, 40,492 of the shipments handled by these protestants weighing over 47.4 million pounds and producing revenue for Jack Cole and Dixie of $911,059 would be subject to diversion through these applications. This constitutes approximately 52 percent of the total combined revenues of Jack Cole and Dixie for the month. Of these shipments, 5,716 weighing some 5.6 million pounds and producing revenue of $97,822 were interlined between Jack Cole or Dixie and the applicants. By far the largest amount of this interline was with Red Ball at Jackson, Miss. Interline with Red Ball accounts for about 10 percent of the operating revenue of Dixie and almost 4 percent of the combined operating revenue of Jack Cole and Dixie.

Jack Cole and Dixie hold out to the public a second day service between their terminal points in Alabama, Georgia, Louisiana, Mississippi and Tennessee. Faster service is not held out because the freight is routed through the Birmingham terminal as a break-bulk station. This involves some delay resulting in the greater portion of the freight between these terminals receiving second day service. The carriers have experienced no substantial objection to the service from their shippers. Records of performance during a one week period in May 1967 discloses on time performance out of the Atlanta terminal ranging from 58 to 93.7 percent of the shipments handled; from the Birmingham terminal from 72.6 to 100 percent on time performance, from the New Orleans terminal from 87 to 100 percent; from the Jackson terminal from 20 to 89 percent; from the Memphis terminal from 30 to 100 percent; and from the Meridian terminal from 25 to 67 percent. Of the total 1,136 shipments involved in the one week test period, 798 or 70 percent received on time service, and 94 percent were delivered by the third day.

Jack Cole-Dixie have an imbalance of freight moving westbound. In may 1967 they operated 129 empty vehicles from New Orleans, Jackson, Meridian and Memphis back to the Atlanta and Birmingham areas. They express the view that they are performing a reasonably adequate service to the public and that the grant of these applications not only will divert from them traffic essential to their continued operation, but also will result in reducing even more the freight available for eastbound operations from the four points mentioned to the Birmingham and Atlanta areas.

BROWN TRANSPORT CORP. (BROWN) - ATLANTA, GA.

*Protest:* - The Herrin application.

*Operations:* - Brown is a common carrier by motor vehicle of general commodities operating as here relevant over routes extending between Knoxville, Tenn., on the north and Augusta and Savannah, Ga., in the south and east, serving numerous intermediate points including Etowah and Maryville, Tenn., and Atlanta, Athens and Macon, Ga. It operates 12 terminals throughout its territory including 2 in Tennessee





and 10 in Georgia. It operates 225 trailers, 81 road tractors and 28 city tractors as well as 96 pickup and delivery units. Its operating revenue in 1966 was $5 million. Brown solicits traffic moving between points on its system, on the one hand, and, on the other, points in Alabama, Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas, operating primarily through the Atlanta gateway.

*Interest:* - Brown has joint through routes and rates with Herrin over the Macon gateway. It opposes Herrin's extension of operation into Atlanta which may well divert a considerable amount of freight. During June 1965, Herrin delivered to Brown in Macon for movement to Atlanta alone some 185 shipments weighing approximately 200,000 pounds. This traffic was diverted from Brown after Herrin filed this application. [As noted in Appendix A-1, page A-4, in January 1968 Herrin extended its operation from Macon into Atlanta through a purchase of operating rights.]

EAST TEXAS MOTOR FREIGHT LINES, INC. (ETMF) [1]
DALLAS, TEX.

*Protest:* - All applications except that of Roadway.

*Operations:* - ETMF is a common carrier of general commodities operating over routes extending from its Dallas-Fort Worth base area southward to San Antonio, Houston, Port Arthur and Beaumont, Tex., eastward through Shreveport or Memphis to Birmingham and Atlanta, and northward through Little Rock and St. Louis to Chicago. Its operation into Atlanta and Birmingham was begun in April 1965 following purchase of those rights. ETMF maintains 19 terminals, 12 of which are located at Texas points. It operates a total of 581 tractors, 1,011 trailers, and 388 straight trucks. Its operating revenue for 1966 was $34.3 million. ETMF predominantly handles less-than-truckload freight. In 1966 it transported 2,123,486 shipments of which only 28,317 were truckloads and the average weight per shipment was 886 pounds. An analysis of freight billed at Dallas and transported to Atlanta in the week of June 26, 1967 (825 shipments) disclosed that 35.3 percent weighed less than 100 pounds; and of the freight billed at Atlanta and transported to Dallas in the same week (814 shipments), 25.9 percent weighed less than 100 pounds. In 1966 claims were filed on only one percent of the shipments handled and the ratio of claims paid to revenue was 1.56 percent.

*Interest:* - The nine applications being protested seek authority which duplicates that of ETMF to a substantial extent and will subject a large portion of its tonnage to possible diversion if granted. For example, in the first six months of 1967, from Atlanta to its Texas, Louisiana, Arkansas and Memphis terminals, ETMF transported 100,228 shipments weighing about 65.3 million pounds, and in the reverse direction from those terminals to Atlanta it transported 73,729 shipments weighing about 77.5 million pounds. From Birmingham there were 30,350 shipments weighing 27.8 million pounds and to Birmingham 26,664 shipments weighing 23.7 million pounds. Of all these, 78,588 shipments weighing a total of 62 million pounds moved between its Atlanta terminal, on the one hand, and its terminals at Dallas, Fort Worth and Houston on the other; and 24,925 shipments weighing a total of 19.4 million pounds

[1] In a report and recommended order in No. MC-41432 (Sub-No. 103), East Texas Motor Freight Lines, Inc., Extension—Mississippi and Louisiana Points, served March 26, 1971, an examiner found that the public convenience and necessity requires operation by East Texas, over regular routes, of general commodities, with the usual exceptions, between Birmingham and Shreveport, serving the intermediate points of Monroe and West Monroe, La., and Jackson, Meridian, and Vicksburg, Miss., and the off-route points of specified plantsites, subject to certain restrictions. The proceeding is pending on exceptions.

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moved between its Birmingham terminal, on the one hand, and its Dallas and Fort Worth terminals on the other.

ETMF interlines freight with other carriers to provide joint through service. It maintains joint rates and through routes with 36 carriers at Birmingham including applicants Baggett, Bowman, Deaton and Floyd & Beasley; with 35 carriers at Atlanta including Baggett, Bowman and Johnson; with 24 carriers at Houston including Herrin, Red Ball and Strickland; with 30 carriers at Dallas including Herrin, Jones, Red Ball, Roadway and Strickland; with 23 carriers at Little Rock including Jones; with 12 carriers at Memphis including Bowman, Deaton, Herrin, Jones, Red Ball and Roadway; and with 12 carriers at Shreveport including Deaton, Herrin, Red Ball and Strickland. In the first six months of 1967 ETMF received a total of 8,866,311 pounds of freight at the three interchange points of Atlanta, Birmingham and Memphis from applicants Bowman, Johnson, Red Ball, Jones, Baggett, Floyd & Beasley and Deaton. Nearly one-half (4,239,915 pounds) was received from Bowman.

ETMF holds out to the public second day service on less-than-truckload freight between its Atlanta and Birmingham terminals, on the one hand, and, on the other, its terminals at Dallas, Fort Worth, Houston, Texarkana, Shreveport, Little Rock; and also between Birmingham, on the one hand, and, on the other, Beaumont, Henderson, Longview, Lufkin, Marshall and Tyler, with third day service between these latter points and the Atlanta terminal. Third day service also is offered between the Atlanta and Birmingham terminals, on the one hand, and, on the other, its San Antonio and Atlanta, Tex., terminals. A review of one week's traffic between the Atlanta and Dallas terminals, the Atlanta and Houston terminals, the Birmingham and Dallas terminals, and the Birmingham and Houston terminals, disclosed a total of 3,759 shipments handled of which 2,958 or 78.7 percent were delivered on time, that is second day or better service.

ETMF is of the opinion it is rendering a reasonably adequate and satisfactory service to the public. It is not operating at capacity and is striving to obtain additional traffic. It now has the competition of a number of single-line services between its terminal points as well as numerous competitive joint-line services. Any diversion of its present freight which may result from the grant of these applications will impair its ability to continue its present standard of service.

TRANSCON LINES (TRANSCON) -
LOS ANGELES, CALIF.

*Protest:* - All applications except that of Roadway.

*Operations:* - Transcon is a motor common carrier of general commodities authorized to operate over a network of routes extending between Atlanta and Birmingham in the Southeast through Memphis, Little Rock, Dallas, Fort Worth, Amarillo, Houston, Oklahoma City, Ponca City, Tulsa, St. Louis, Kansas City, Wichita and on to the West Coast; also between points in the New York City, Philadelphia, Wilmington, Baltimore and Washington area through the midwest and southwest points to the West Coast. Its authority to operate between these eastern points and the Southwest on a single-line basis was not acquired until after the hearing on these applications was begun. Transcon maintains 46 terminals throughout the area and operates 786 tractors and 2,097 trailers in over-the-road service, and 406 straight trucks, 476 tractors and 269 trailers in pickup and delivery service. Its operating revenue for 1966 was over $66 million and for the first quarter of 1967 almost $19 million.

In 1966 Transcon transported 1,942,282 less-than-truckload shipments and only 38,053 truckload shipments. Sixty-seven percent of its revenue was derived from less-





than-truckload freight. Although authorized to serve many points in Arkansas and Oklahoma, Transcon does not offer less-than-truckload service to any points other than Little Rock, Ark., and Oklahoma City, Tulsa and Ponca City, Okla., and their commercial zones. It interlines freight to other points in those States. Similarly, in Georgia and Alabama it generally interlines freight to points beyond the Atlanta and Birmingham area even though it is authorized to serve the points, unless there is a sufficient volume to warrant the operation. Its operation from Atlanta to Kansas City is necessarily by way of Oklahoma City or Tulsa involving some circuity. As a result Transcon interlines some of that traffic at Memphis with Jones. The average length of haul for Transcon in 1967 was 1,461 miles.

*Interest:* - Joint-line shipments are a very important portion of Transcon's freight. In 1966, 67 percent of its total shipments were handled in joint-line service producing 51.8 percent of its total operating revenue. At 10 of its terminals involved in these proceedings, namely, Atlanta, Birmingham, Dallas, Houston, Kansas City, Little Rock, Memphis, Oklahoma City, Tulsa and Wichita, Transcon interlined with connecting carriers in the month of May 1967 almost 60 million pounds of freight. This includes 1,217,179 pounds with Bowman and 121,787 pounds with Johnson at Atlanta; 435,635 pounds with Baggett and Floyd & Beasley at Birmingham; 1,026,305 pounds with Herrin, Red Ball and Strickland at Dallas; and 137,591 pounds with Bowman at Memphis.

Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data reflecting tonnage and revenue involved from such freight for the year 1966.

TONNAGE—1966

| | Weight | Revenue |
|---|---|---|
| *Atlanta* | *Pounds* | *Dollars* |
| 1. (a) From Atlanta to Dallas and Houston | 33,744,535 | 3799,483 |
| (b) From Dallas and Houston to Atlanta | 25,914,325 | 569,545 |
| 2. (a) From Atlanta to Memphis, Arkansas, Oklahoma, Missouri and Kansas | 40,279,280 | 813,575 |
| (b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Atlanta | 31,956,435 | 714,575 |
| 3. (a) From Atlanta to Amarillo | 4,385,305 | 133,822 |
| (b) From Amarillo to Atlanta | 1,010,719 | 28,406 |
| 4. (a) From Atlanta to West Coast | 68,515,421 | 3,686,351 |
| (b) From West Coast to Atlanta | 52,067,568 | 3,128,730 |
| Total Atlanta outbound | 142,224,564 | 5,383,561 |
| Total Atlanta inbound | 110,949,045 | 4,436,550 |
| *Birmingham* | | |
| 1. (a) From Birmingham to Dallas and Houston | 5,741,068 | 104,288 |
| (b) From Dallas and Houston to Birmingham | 3,452,514 | 79,724 |
| 2. (a) From Birmingham to Memphis, Arkansas, Oklahoma, Missouri and Kansas | 3,540,412 | 36,367 |
| (b) From Memphis, Arkansas, Oklahoma, Missouri and Kansas to Birmingham | 9,678,391 | 94,464 |
| 3. (a) From Birmingham to Amarillo | 2,785,135 | 61,745 |
| (b) From Amarillo to Birmingham | 635,731 | 13,125 |
| 4. (a) From Birmingham to West Coast | 38,166,550 | 1,645,897 |
| (b) From West Coast to Birmingham | 20,449,658 | 1,180,537 |
| Total Birmingham outbound | 45,233,165 | 1,947,797 |
| Total Birmingham inbound | 34,346,394 | 1,367,850 |

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Operation between the Eastern Seaboard and the Southwest was not begun until the latter half of 1966. For the month of May 1967 Transcon transported between its Dallas and Houston terminals, on the one hand, and, on the other, its terminals at Richmond, Va., Baltimore, Md., Carlstadt, Metuchen, and Trenton N. J., Newburgh, N. Y., Philadelphia, Pa., and Wilmington, Del., a total of 3,426,928 pounds producing revenue of $130,938. This traffic too is subject to diversion.

Transcon is of the opinion that it is performing a satisfactory service to the public and is actively soliciting additional freight. A traffic study of shipments handled during certain periods in May 1966 between various of the Transcon terminals depicting the elapsed time from the Transcon billing date to the date the shipment was delivered to the consignee or a connecting line discloses the following data withrespect to certain of the key terminals here involved.

PERIOD MAY 9 THROUGH MAY 21, 1966 EXCEPT AS NOTED BY * WHICH INDICATES PERIOD AS MAY 9 THROUGH MAY 13, 1966

| From | To | Number of shipments | Service from billing date | |
|---|---|---|---|---|
| | | | 2d day or better | 3d day or better |
| | | | *Percent* | *Percent* |
| Birmingham | Oklahoma City | 245 | 78.7 | 97.1 |
| Do | Tulsa | 173 | 53.8 | 97.6 |
| Do | Dallas | 131 | 14.8 | 91.6 |
| Atlanta | Oklahoma City | 446 | 30.7 | 73. |
| Do | Tulsa | 310 | 77.8 | 95.1 |
| Do | Dallas | 1,427 | 56.7 | 95.8 |
| Oklahoma City | Birmingham | 109 | 47. | 90.8 |
| Tulsa | ------do | 172 | 19.9 | 86. |
| Dallas | ------do | 167 | 17.3 | 85. |
| Little Rock | ------do | 4 | 75. | 75. |
| Oklahoma City* | Atlanta | 49 | 28.6 | 82.4 |
| Tulsa* | ------do | 78 | 14.3 | 92.3 |
| Dallas* | ------do | 229 | 14.8 | 86. |

ROADWAY EXPRESS, INC. (ROADWAY) [1]
AKRON, OHIO

*Protest:* - All applications except its own.

*Operations:* Roadway holds authority to operate as a motor common carrier of general commodities with the usual exceptions over an extensive network of routes in States generally east of and including Amarillo, Tex., Kansas City, Kans., and Milwaukee, Wis., except Florida, Maine, New Hampshire, and Vermont. It also is authorized to transport both general commodities and specified commodities over irregular routes.

Briefly Roadway's interconnecting network of regular routes exends along the Eastern Seaboard from Boston through Atlanta to Montgomery, Ala. with service at such major points as Providence, R. I., New Haven, Conn., New Yorl City, Scranton, Harrisburg and Philadelphia, Pa., Baltimore, Md., Richmond, Va., and most major industrial cities and areas in the Carolinas and Georgia; also within the central and

[1] In No. MC-F-10178, *Roadway—Control—West Brothers* (not printed), decied June 26, 1969, the Commission approved Roadway's application to control West Brothers, Inc., a protestant in this proceeding.





southern States serving major industrial cities and areas in upper New York State, Ohio, Michigan, Illinois and Indiana, Milwaukee, Wis., St. Louis, Mo., Nashville, Memphis, and Chattanooga, Tenn., Atlanta, Ga., and Gadsden, Birmingham and Montgomery, Ala.; and also between those areas and the Southwest serving such major points as Kansas City, Tulsa, Oklahoma City, Dallas, Houston, Amarillo and San Antonio, Tex. As noted in Appendix A-2 subsequent to the close of the hearing it acquired control of protestant West Brothers, Inc.

During 1966 Roadway transported a total of 4,996,034 shipments. Of these, 58.9 percent weighed less than 300 pounds and 83.9 percent weighed under 1,000 pounds. Its 119 terminals include its major break-bulk terminals as well as the satellite terminals which for the most part feed through one of the major break-bulk terminals. Direct loading from origin to destination is the usual practice where the volume of freight warrnts; otherwise the shipments are routed through one of the break-bulk terminals.

*Interest:* - A large portion of Roadway's present traffic will be subject to diversion if these applications are granted. For example, in a two week period May 29 through June 11, 1966, Roadway transported over 16,000 shipments weighing in excess of 13 million pounds moving between Texas points, on the one hand, and, on the other, points in Georgia, Alabama, North Carolina, South Carolina, Tennessee, Virginia, Maryland, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. All of this traffic would be subject diversion to one or more of the applicants. Roadway maintains that this freight is now subject to numerous single- and joint-line competitive services and that Roadway performs a satisfactory service for the public.

Roadway has established certain service standards which it holds out to the public. These are said to be realistic standards which form the major basis for Roadway's incentive monetary awards to its employees. Briefly the Roadway schedules to and from Dallas and Houston are third morning for Alabama, Tennessee and Georgia points with the exception of Atlanta which is second morning. Between Texas points and the satellite terminal points in North Carolina and South Carolina the standard is four days, and three days from or to the major terminals of Greenville, Spartanburg, Charlotte and Winston-Salem. Its schedules are four days between the Texas points and points in Virginia, Kentucky, Maryland, Pennsylvania, New Jersey and the major points in upper New York State. They are five days to and from the satellite upstate New York points and all of New England. Employees at the various terminals responsible for "on time" performance under these standards receive incentive awards on the basis of performance within the standard. In 1966 Roadway paid approximately $3 million in incentive awards. These service standards are constantly reviewed so that they will not be too stringent to destroy the incentive, nor so liberal as to be too costly to the company. A review of the elapsed time from the Roadway billing date to delivery of the freight to the consignee or connecting carriers for these 16,000 shipments indicates a very substantial on time performance under the Roadway standards.

In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance.

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HERRIN TRANSPORTATION COMPANY (HERRIN)* - HOUSTON, TEX.

*Protest:* - The Red Ball, Deaton, Floyd & Beasley, Strickland, Baggett and Jones applications.

*Operations:* - See under applicants' evidence in the attached report.

In brief Herrin's authority extends from Dallas-Fort Worth and Houston on the west to Little Rock and Memphis on the north; also through Shreveport, La., Jackson, Miss., and Montgomery, Ala., to Columbus, Ga.; and along the Gulf Coast through Beaumont, Port Arthur, New Orleans and Pensacola to Jacksonville, Fla., and Brunswick and Savannah, Ga., on the East Coast. It serves 16 points in Arkansas, 50 in Florida, 125 in Georgia, 237 in Louisiana, 15 in Tennessee and 155 in Texas.

*Interest:* - A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted. During the last three months of 1966 the freight handled through its various terminals which is considered subject to diversion by these application is as follows:

*Herrin Freight affected by applications period - October, November, December 1966*

| From (terminal) | Number of shipments | Weight | Herrin revenue |
|---|---|---|---|
| | | *Pounds* | |
| Dallas | 4,794 | 4,785,017 | $91,420 |
| Houston | 7,970 | 9,201,446 | 159,834 |
| Macon | 3,984 | 5,385,721 | 96,288 |
| Pensacola | 467 | 2,408,380 | 27,405 |
| Savannah | 1,641 | 2,338,285 | 48,726 |
| Jacksonville | 5,704 | 6,296,718 | 130,336 |
| Shreveport | 825 | 876,505 | 15,381 |
| Monroe | 256 | 802,892 | 4,967 |
| Baton Rouge | 338 | 2,912,990 | 22,757 |
| Lake Charles | 649 | 631,538 | 55,862 |

ET&WNC TRANSPORTATION COMPANY (ET&WNC) - JOHNSON CITY, TENN.

*Protest:* - The Baggett and Bowman applications.

*Operations:* - ET&WNC is a motor common carrier of general commodities operating over regular routes extending between New York City, Philadelphia, Wilmington, Baltimore and Washington on the north and east, Little Rock, Ark., on the west, and Greenwood and Greenville, Miss., on the south, serving points in North Carolina, South Carolina and Tennessee, northwest Georgia, northwest Alabama,

*As noted in footnote 1 of appendix A, Herrin has been merged into McLean and the latter has been substituted for the former herein. In a report and recommend order in No. MC-F-10260 *McLean Trucking Company—Purchase—S.A. Harrison*, served November 26, 1969, which became effective on January 21, 1969, McLean was authorized to purchase certain authority. Pursuant thereto, a certificate in No. MC-31389 (Sub-No. 120) was issued on August 27, 1970, authorizing regular-route service between Nashville, Tenn., and Atlanta, serving intermediate and off-route points in Davidson County, Tenn. Additionally, McLean, as substituted applicant for Herrin in No. MC-31389 (Sub-No. 121), which certificate was issued March 27, 1970, was granted authority to transport general commodities between Memphis, Tenn., and Baton Rouge, La.





western Mississippi and northeastern Akransas. It maintains 33 terminals including 14 in Tennessee, 7 in North Carolina, 4 in Mississippi, 2 each in South Carolina and Arkansas and 1 each in Alabama, Maryland, Pennsylvania and New York. It operates 271 tractors, 539 trailers and 133 pickup and delivery trucks. Its operating revenue for 1966 was over $11.5 million.

*Interest* - ET&WNC protests the Bowman proposal to serve Little Rock and Jonesboro, Ark., and Greenwoood and Greenville, Miss., and its proposal to serve points west of Memphis involving freight which ET&WNC handles on an interline basis primarily through its Memphis terminal. Its protest of the Baggett application includes primarily the proposal to serve between certain points in Texas and Louisiana, on the one hand, and Chattanooga and points in north Alabama common to both carriers, on the other. Those points include Florence, Tuscumbia, Muscle Shoals, Sheffield and Scottsboro.

A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. During the month of May 1966 ET&WNC transported some 2,747 shipments weighing over 2 million pounds to or from the following of its terminals which would be subject to diversion.

*ET&WNC Freight subject to diversion by Bowman & Baggett applications - May 1966*

| ET&WNC terminal | Number of shipments | Weight |
|---|---|---|
| | | *Pounds* |
| Little Rock, Ark. | | |
| Outbound | 450 | 216,699 |
| Inbound | 617 | 784,747 |
| Jonesboro, Ark. | | |
| Outbound | 69 | 19,495 |
| Inbound | 74 | 76,077 |
| Greenville, Miss. | | |
| Outbound | 176 | 193,337 |
| Inbound | 128 | 177,040 |
| Greenwood, Miss. | | |
| Outbound | 96 | 34,204 |
| Inbound | 102 | 64,783 |
| Memphis, Tenn. | | |
| Outbound | 600 | 102,535 |
| Inbound | 435 | 546,921 |

This is valuable and necessary traffic and any loss will adversely affect ET&WNC. Additionally, ET&WNC has the equipment and facilities to handle increased tonnage over its lines.

UNITED MOTOR FREIGHT TERMINAL, INC. (UNITED) - * BIRMINGHAM, ALA.

*Protest:* - The Herrin, Red Ball, Floyd & Beasley, Strickland, Johnson and Jones applications.

*See footnote 11, supra.

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*Operations:* - United is a motor common carrier of general commodities operating over regular routes between Atlanta and Birmingham serving intermediate points and off-route points within 15 miles of Atlanta and those within 5 miles of Birmingham. It maintains terminals at Atlanta, Ga., Birmingham, Anniston and Heflin, Ala. It operates 48 trailers, 14 over-the-road tractors, 17 city tractors and 31 pickup trucks. During 1966 it transported 143,809 less-than-truckload shipments and 2,122 truckload shipments, and its operating revenue was over $1.3 million. United has interline arrangements with 39 connecting carriers at Atlanta and 35 at Birmingham. Over 60 percent of its traffic is interlined.

United holds out overnight service between Atlanta and Birmingham, operating about six schedules per day from Birmingham to Atlanta and eight or nine in the reverse direction from Atlanta to Birmingham. This imbalance has necessitated the return of 8 to 10 empty vehicles per week from Birmingham. During two different one week test periods United transported an aggregate of 1,264 shipments from Birmingham to Atlanta of which 86.8 percent received overnight service, and 96.8 percent were delivered by the second day. In the same periods United transported an aggregate of 3,978 shipments from Atlanta to Birmingham of which 95.6 percent received overnight service and 98.6 percent were delivered by the second day.

*Interest:* - Three of the applicants (Strickland, Red Ball and Jones) propose a service between Atlanta and Birmingham which will be directly competitive with that of United. In addition, United interlines substantial freight moving to or from Louisiana and Texas points much of which traffic will be subject to diversion to the proposed single-line services of the applicants. For some years United has worked closely with Mercury Freight Lines which operates between Birmingham, on the one hand, and, on the other, Dallas, Fort Worth, Houston and Beaumont, holding out to the public a third day service from Atlanta to these Texas points on less-than-truckload freight. A review of the shipments during the previously noted two one week test periods, disclosed that of the 214 shipments transported by the Mercury Freight/United joint-line service from Texas points to Atlanta, 66.8 percent were delivered on time (within the third day) and 93 percent were delivered by the fourth day.

United is a relatively small short line (approximately 165 miles) carrier which now has substantial single-line competition for freight moving between Atlanta and Birmingham and also single-line competition for its joint-line services in connection with freight moving between Atlanta and the Texas points. It is in a position to handle additional freight. Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United.

RED BALL MOTOR FREIGHT, INC. (RED BALL) - DALLAS, TEX.

*Protest:* - The Herrin Roadway, Deaton, Floyd & Beasley, Strickland, Baggett, Bowman and Johnson applications.

*Operations:* - See under applicants' evidence in the attached report.

In brief Red Ball is a motor common carrier of general commodities operating over a network of routes within the States of New Mexico, Colorado, Texas, Oklahoma, Louisiana, Arkansas, Tennessee, Mississippi, Alabama, Kansas and Missouri. It operates 654 tractors, 1,591 trailers, and 712 pickup trucks. Its operating revenue in 1966 was over $41.6 million (73 percent of which was derived from less-than-truckload freight and 27 percent from truckload). It operates 93 terminals throughout its routes and serves 136 points in Arkansas, 24 in Alabama, 630 in Louisiana (153 of





which are intrastate only), 541 points in Texas, 112 points in Colorado, 83 points in New Mexico, and Kansas City, Kans.-Mo., and Memphis, Tenn. It maintains interline arrangements with a large number of carriers at various points on its routes including most of the applicants.

*Interest:* - Applicants are proposing competitive single-line services between points which Red Ball now serves. In addition, they propose services between Atlanta and Birmingham and points now served by Red Ball which duplicate the proposal of Red Ball as an applicant. It is Red Ball's position that its present services are adequate and satisfactory to meet any public need. Red Ball holds out to the public a second day service between Dallas, Tex., and Jackson, Miss.; also between Mobile, New Orleans and Baton Rouge, on the one hand, and, on the other, Houston, Beaumont, Port Arthur, Orange and Dallas; and also between Memphis, on the one hand, and, on the other, Dallas, Houston, New Orleans, Kansas City and Baton Rouge. It offers a first day service between Dallas, on the one hand, and, on the other, Monroe and Shreveport, La., El Dorado and Crossett, Ark., Jackson, Miss., and Baton Rouge, La. During the two months of March and July 1967 Red Ball transported an aggregate of 4,797 shipments from Dallas to Jackson, Miss., of which 85.2 percent received on time delivery to consignees or connecting carriers (not more than second day service) and 97.5 percent were delivered by the third day. In July 1967 Red Ball transported 432 shipments from Baton Rouge to Memphis delivering 85.6 percent on time (by the second day) and 93.5 percent by the third day. Data exhibiting service performance between other points was not furnished.

Red Ball expresses the view that if additional authority is to be granted for single-line service between Atlanta and Birmingham, on the one hand, and points in Louisiana, Mississippi, Arkansas, Texas, Kansas and Missouri, on the other, as sought by these applicants, Red Ball is the appropriate recipient of such authority because of its extensive coverage of cities and communities in these States and its ample terminal and operating facilities and financial resources which would enable it to provide single-line services far more extensive in the southwest territory than those proposed by any of the other applicants.

RYDER TRUCK LINES, INC. (RYDER) - JACKSONVILLE, FLA.

*Protest:* - All applications.

*Operations:* - Ryder is a motor common carrier of general commodities operating over a network of routes extending between Miami, Fla., New Orleans, La., and Houston, Tex., on the south, Shreveport, La., Memphis, Tenn., and St. Louis, Mo., on the west, Milwaukee, Wis., Chicago, Ill., Indianapolis, Ind., Cincinnati, Ohio and Roanoke, Va., on the north, and Raleigh and Charlotte, N. C., and Jacksonville, Fla., on the east. Since April 1966 Ryder has controlled Harris Express, Inc. (Harris), who also is a motor common carrier of general commodities with regular routes extending between the New York City area on the north and Greenville, S. C., on the south by way of Philadelphia, Baltimore, Charlotte and Greensboro, N. C., among other important points. It is also authorized to serve substantial areas in North Carolina, South Carolina, Pennsylvania and New Jersey.

Prior to August 1965, Ryder was owned by Ryder System, Inc. Since that time it has been owned by International Utilities, Inc., which in turn is owned by International Utilities Corporation. Following the change in ownership there have been a number of changes in management and operations.

Ryder operates 568 over-the-road tractors, 1,742 over-the-road trailers, 499 pickup trucks, 627 pickup tractors and 549 pickup trailers. Harris Express operates 50 over-

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the-road tractors, 136 over-the-road trailers, 26 pickup tractors, 6 pickup trailers and 25 pickup trucks. Ryder's operating revenue for the first six months of 1967 was about $28 million. Ryder operates 60 terminals and 18 agency terminals on its routes, and Harris operates 10 terminals.

Ryder handles mainly less-than-truckload shipments and where the volume of freight warrants it operates direct schedules between its terminals. Where the traffic volume does not warrant, it will operate through one of its break-bulk terminals for the purpose of consolidating freight. It serves much of its territory through the operation of peddle runs to the smaller towns and communities near its terminals. At times it also interlines freight with other carriers to some points it is authorized to serve directly where, considering the volume and flow of traffic involved, such interline service will result in a faster and more satisfactory handling of the freight. It maintains connecting line concurrences with many carriers but for the most part limits participation in through rates to two line hauls.

*Interest:* - Ryder opposes the portions of these 10 applications that would enable the applicants to operate between points in Texas, Louisiana or Mississippi, on the one hand, and, on the other, points in North Carolina, South Carolina, Georgia, Florida, Tennessee and Alabama; also between points in Louisiana, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Ohio and Wisconsin; and between Memphis and Atlanta, Ga., or points in Florida. In connection with its operation of Harris Express, it is also opposed to the applications (particularly those of Bowman, Roadway and Johnson) which will enable those carriers to operate between the Harris territory in New York, New Jersey, Pennsylvania, the District of Columbia, Maryland, Delaware, Virginia, North Carolina and South Carolina, on the one hand, and, on the other, points sought to be served in Louisiana, Mississippi and Texas that are served by Ryder.

During a one week test period in March 1966 Ryder transported some 7,258 shipments weighing over 8.9 million pounds between certain points on its routes in the area most involved in these applications. All of this freight is considered to be subject to diversion if these applications are granted. On an annual basis Ryder estimates that this volume of freight subject to diversion will amount to approximately $7.5 million in revenue to Ryder. This is exclusive of any of the Harris shipments which would be affected by these applications.

Ryder has established certain service standards which it holds out to the public. These standards are applicable not only to the terminal cities specified but also to the areas served by those terminals. For example, the Houston terminal also serves Texas City and Galveston. As related to these applications the service standards (in days) are as follows:





*Service standards of Ryder Truck Lines, Inc., between areas involved in the instant applications*

| Between | Houston, Tex. | All other Texas terminals | New Orleans, La. | Baton Rouge, La. | All other Louisiana terminals | Jackson, Miss. | Meridian, Miss. | All other Mississippi terminals | Memphis, Tenn. |
|---|---|---|---|---|---|---|---|---|---|
| Charlotte, N.C. | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 3 | 3 |
| All other N.C. terminals. | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Greenville, S.C. | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 3 | 3 |
| Atlanta, Ga. | 3 | 4 | 2 | 2 | 3 | 2 | 2 | 3 | 2 |
| All other Georgia terminals. | 4 | 4 | 3 | 3 | 4 | 3 | 3 | 4 | 3 |
| Jacksonville, Fla. | 4 | 4 | 3 | 4 | 4 | 3 | 3 | 4 | 2*/3** |
| Miami, Fla. | 5 | 4 | 4 | 3 | 4 | 3 | 3 | 4 | 3*/4** |
| Tampa, Fla. | 5 | 4 | 4 | 3 | 4 | 3 | 3 | 4 | 3*/4** |
| All other Florida terminals. | 4 | 4 | 4 | 3 | 4 | 4 | 4 | 5 | 3*/4** |
| Nashville, Tenn. | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 4 | 1 |
| Chattanooga, Tenn. | 3 | 4 | 3 | 3 | 4 | 3 | 3 | 4 | 2 |
| Knoxville, Tenn. | 4 | 4 | 3 | 3 | 4 | 3 | 3 | 4 | 2 |
| All other Tennessee terminals. | 4 | 4 | 3 | 4 | 4 | 4 | 4 | 4 | 2 |
| Birmingham, Ala. | 3 | 3 | 2 | 2 | 3 | 2 | 2 | 2 | ------ |
| All other Alabama terminals. | 4 | 4 | 3 | 3 | 4 | 2 | 2 | 3 | 1 |
| Eastern terminals—Ill., Ind., Ky., Ohio, and Wis. terminals. | 5<br>4 | 5<br>4 | 5<br>3 | 5<br>3 | 5<br>4 | 5<br>3 | 5<br>3 | 5<br>4 | 3<br>2 |

**Northbound standard
*Southbound standard

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An analysis of the 7,258 shipments during the one week test period discloses on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent, on the basis of the Ryder standards. Some of the shipments involved in this study were interlined by Ryder to destination even though Ryder is authorized to serve the point directly. The time computation includes only the time from Ryder's billing date to delivery to consignee or connecting line carriers. The number of shipments moving between the areas involved in the study and the performance is as follows:





*Analysis of service performance of Ryder Truck Lines, Inc., on shipments between certain areas during period of March 13 through 19, 1966*

| Between | Texas | | Louisiana | | Mississippi | | Memphis | |
|---|---|---|---|---|---|---|---|---|
| | Number of shipments | Percent on time | Number of shipments | Percent on time | Number of shipments | Percent on time | Number of shipments | Percent on time |
| North Carolina | 891 | 89.7 | 589 | 85.7 | 185 | 83.9 | ------- | ------- |
| South Carolina | 826 | 83.7 | 151 | 81.7 | 82 | 81.8 | ------- | ------- |
| Georgia | 849 | 87.8 | 607 | 85.0 | 89 | 81.8 | 389** | 85.6** |
| Florida | 827 | 87.1 | 76 | 82.9 | 55 | 81.5 | 757 | 85.7 |
| Tennessee | 281 | 84.5 | 394 | 86.4 | 93 | 83.9 | ------- | ------- |
| Alabama | 308 | 90.9 | 457 | 87.5 | 58 | 85.5 | ------- | ------- |
| Ill., Ind., Ky., Ohio, and Wis. | ------- | ------- | 87* | 80.5* | ------- | ------- | ------- | ------- |

*To and from Baton Rouge and New Orleans, La., only.
**To and from Atlanta, Ga., only.

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Although Ryder experienced some pickup difficulties and delays in the fall of 1965 after the merger of the Hoover Motor Express Company and the consolidation of terminal facilities of Hoover and Ryder at Atlanta, those problems appear to have been solved. A record of requests for pickup service during two weeks in March and one week in April 1967 indicates a total of 5,820 pickups scheduled, of which 5,736 or 98.6 percent were made.

Ryder believes that diversion of a substantial portion of its freight which may result from a grant of these applications will cause a decrease in its number of direct schedules between important service centers, will result in deterioration of its service to the public, and will adversely affect its financial status.

BRASWELL MOTOR FREIGHT LINES, INC. (BRASWELL) - DALLAS, TEX.

*Protest:* - All applications.

*Operations:* - Braswell is a motor common carrier of general commodities authorized to operate over regular routes extending from Los Angeles on the west by way of Phoenix, Tucson, El Paso to Houston, Tex., on the south; also by way of Fort Worth-Dallas and Shreveport to Memphis, Tenn., Jackson, Miss., and Baton Rouge and New Orleans, La., on the east; also between Houston and Oklahoma City and Tulsa by way of Dallas-Fort Worth; between New Orleans and Oklahoma City and Tulsa by way of Shreveport; and between New Orleans and Memphis by way of Jackson or Vicksburg. Braswell also is authorized to operate between points in Oklahoma, on the one hand, and, on the other, St. Louis, Mo., and points in Central and eastern Illinois including Chicago.[1]

Braswell has 34 terminals including 15 in Texas, 7 in Louisiana, 4 in Oklahoma, 3 in each Mississippi and Arizona, and 1 each in California and Tennessee. It operates 177 line-haul tractors, 316 line-haul trailers, 64 pickup tractors, 53 pickup trailers, and 152 straight trucks. Its operating revenue for 1966 was approximately $11.5 million. About 40 percent of its tonnage is interline freight.

*Interest:* - During the year 1966 (prior to instituting any service under its certificate authorizing an extension of operation between Jackson and Atlanta and Birmingham) approximately 25.7 percent of the tonnage transported by Braswell producing about 16 percent of its total operating revenue would have been subject to diversion if these applications had been granted. This tonnage is comprised of freight moving between the following points:

[1] At the time of the hearing in these proceedings the Commission had granted Braswell authority for the extension of its regular routes from Jackson, Miss., by way of Birmingham, Ala., to Atlanta, Ga., with service also at Gadsden, Ala., and Rome, Ga.; and from Jackson by way of Meridian, Miss., Montgomery, Ala., and Columbus, Ga., to Atlanta serving intermediate points. However, service had not been initiated under that grant of authority pending termination of a certain civil litigation pertaining to the Commission decision. That litigation has been ended upholding the Commission's grant of the authority. Under the new certificate, Braswell proposes to serve some additional 141 points in Mississippi, Alabama, and Georgia and establish a number of terminals in that area. Additionally, Braswell was granted authority in *Braswell Motor Freight Lines, Inc., Extension*, 112 M.C.C. 558 (1970), to transport general commodities, with the usual exceptions over regular routes between Houston, Tex., and New Orleans, La. The certificate authorizing such operations, in No. MC-111383 (Sub-No. 17), was issued July 16, 1971.

114 M.C.C.





*Braswell freight subject to diversion - 1966 system totals*

Tonnage: 477,298,358 pounds
Revenue: $11,542,495.61

| Terminal | Tonnage | Revenue |
|---|---|---|
| | *Pounds* | |
| Fort Worth to: | | |
| New Orleans | 9,071,897 | $136,485.43 |
| Jackson | 2,551,656 | 46,210.05 |
| Memphis | 1,156,867 | 24,967.53 |
| Dallas to: | | |
| New Orleans | 11,404,109 | 226,242.49 |
| Jackson | 6,887,214 | 139,949.72 |
| Memphis | 2,979,516 | 62,403.12 |
| Houston to: | | |
| Jackson | 1,506,626 | 35,315.36 |
| Memphis | 1,118,260 | 19,998.49 |
| Shreveport to: | | |
| Jackson | 1,826,919 | 19,320.87 |
| Memphis | 1,049,456 | 18,441.87 |
| Monroe to: | | |
| Jackson | 280,770 | 3,107.18 |
| Memphis | 2,921,903 | 22,576.00 |
| Jackson to: | | |
| Fort Worth | 1,299,586 | 28,849.39 |
| Dallas | 7,218,988 | 137,343.56 |
| Houston | 1,413,704 | 27,978.65 |
| Shreveport | 1,050,695 | 18,180.84 |
| Monroe | 537,457 | 7,266.98 |
| Memphis | 1,888,875 | 27,806.00 |
| Memphis to: | | |
| Fort Worth | 1,134,875 | 30,564.35 |
| Dallas | 6,636,569 | 108,627.86 |
| Houston | 2,778,988 | 48,631.24 |
| Shreveport | 4,194,428 | 57,948.91 |
| Monroe | 4,598,858 | 69,852.61 |
| Baton Rouge | 3,628,224 | 56,668.88 |
| New Orleans | 11,445,008 | 188,286.47 |
| Jackson | 4,759,653 | 60,189.69 |
| Baton Rouge to: | | |
| Memphis | 5,414,593 | 88,841.94 |
| New Orleans to: | | |
| Memphis | 5,554,574 | 105,959.78 |
| Fort Worth | 2,579,605 | 35,744.98 |
| Dallas | 13,170,480 | 147,883.14 |

114 M.C.C.

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Braswell's protest of the applications is based not only upon this freight diversion, but also upon the diversion which may result from the proposed services which will be competitive with its extended operations to Mississippi, Alabama, and Georgia points. It urges that its services have been satisfactory to the public as evidenced by the lack of complaints against it. Braswell's schedules offered to the public for example, include first day service between Jackson, Miss., on the one hand, and, on the other, Baton Rouge, New Orleans, Dallas, and Shreveport, and second day service between Jackson and Houston, Oklahoma City or Tulsa; also first day service is offered between Memphis and New Orleans, and second day service between Memphis, on the one hand, and, on the other, Dallas, Oklahoma City, and Tulsa.

## APPENDIX H

*Description of regular routes authorized*

PART I

In No. MC-2229 (Sub-No. 123):

(1) Between Atlanta, Ga., and Texarkana, Ark.: From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S Highway 82, thence over U.S. Highway 82 to Texarkana, and return over the same route, serving the intermediate points of Birmingham, Ala., Greenville, Miss., and those on U.S. Highway 82 in Arkansas.

(2) Between Jackson, Miss., and Atlanta, Ga.: From Jackson over U.S. Highway 80 to junction U.S. Highway 29, thence over U.S. Highway 29 to Atlanta, and return over the same route, serving no intermediate points.

(3) Between Meridian, Miss., and Tuscaloosa, Ala.: From Meridian over U.S. Highway 11 to Tuscaloosa, and return over the same route, serving no intermediate points, and serving the termini for the purposes of joinder only, as an alternate route for operating convenience only.

PART II

In No. MC-94201 (Sub-No. 56):

(1) Between Mobile, Ala., and Houston, Tex.: From Mobile over U.S. Highway 90 to New Orleans, La., thence over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 (also Interstate Highway 10), thence over U.S. Highway 90 (also over Interstate Highway 10) to Houston, and return over the same route, serving the intermediate points of Pascagoula, Miss.; New Orleans, Baton Rouge, and Lake Charles, La.; and Orange and Beaumont, Tex., and the off-route points of Grand Isle, Lockport, and Golden Meadow, La., and Port Arthur, Baytown, and Texas City, Tex.

(2) Between Tuscaloosa, Ala., and New Orleans, La.: From Tuscaloosa over U.S. Highway 11 (also over Interstate Highway 59) to New Orleans, and return over the same route, serving the intermediate points of Meridian, Laurel, and Hattiesburg, Miss., and serving the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purposes of joinder only.

(3) Between Poplarville, Miss., and Baton Rouge, La.: From Poplarville over Mississippi Highway 26 to the Mississippi-Louisiana State line, thence over Louisiana Highway 10 to Bogalusa, La., thence over Louisiana Highway 21 to Covington, La.,





thence over U.S. Highway 190 to Baton Rouge and return over the same route, serving no intermediate points, serving Poplarville for the purposes of joinder only, as an alternate route for operating convenience only.

(4) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 and Interstate Highway 59: from Montgomery over U.S. Highway 80 to junction U.S. Highway 11 and Interstate Highway 59, and return over the same route, serving all intermediate points in Alabama.

(5) Between Meridian, Miss., and Fort Worth, Tex.: From Meridian over U.S. Highway 80 (also over Interstate Highway 20) to Fort Worth, and return over the same route, serving the intermediate points of Jackson and Vicksburg, Miss., Monroe, Ruston, and Shreveport, La., and Marshall, Gladewater, Longview, and Dallas, Tex.

(6) Between Tuscaloosa, Ala., and Fort Worth, Tex.: From Tuscaloosa over U.S. Highway 82 to Texarkana, Tex.-Texarkana, Ark., thence over U.S. Highway 67 (also over Interstate Highway 30) to Dallas, Tex., thence over U.S. Highway 80 to Fort Worth, and return over the same route, serving the intermediate points of Columbus, Greenwoood, and Greenville, Miss., El Dorado and Crosset, Ark., Texarkana, Tex-Texarkana, Ark., and Greenville and Dallas, Tex., and the off-route points of Plano and Garland, Tex., and Camden, Ark.

(7) Between Memphis, Tenn., and Topeka, Kans.: From Memphis over U.S. Highway 70 to junction U.S. Highway 63 (also Interstate Highway 55), thence over U.S. Highway 63 to junction U.S. Highway 60 at Cabool, Mo., thence over U.S. Highway 60 to Springfield, Mo., thence over U.S. Highway 66 to Carthage, Mo., thence over U.S. Highway 71 to Kansas City, Mo., thence over Interstate Highway 70 to Topeka, and return over the same route, serving the intermediate points of Jonesboro and West Memphis, Ark., Springfield and Carthage, Mo. and Kansas City, Mo.-Kansas City, Kans.

(8) Between Memphis, Tenn., and Little Rock, Ark.: From Memphis over U.S. Highway 70 to West Memphis, Ark., thence over Interstate Highway 40 to Little Rock, and return over the same route, serving no intermediate points.

(9) Between West Memphis, Ark., and Little Rock, Ark.: From West Memphis over U.S. Highway 70 (also over Interstate Highway 40) to Little Rock, Ark., and return over the same route, serving no intermediate points.

(10) Between Little Rock, Ark., and Greenville, Miss.: From Little Rock over U.S. Highway 65 to junction U.S. Highway 82 near Lake Village, Ark., thence over U.S. Highway 82 to Greenville, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(11) Between Houston, Tex., and Dallas, Tex.: From Houston over U.S. Highway 75 (also over Interstate Highway 45) to Dallas, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

(12) Between Little Rock, Ark., and Texarkana, Tex.: From Little Rock over Interstate Highway 30 (also over U.S. Highway 67) to Texarkana, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only.

PART III

In No. MC-106401 (Sub-No. 18):

(1) Between Atlanta, Ga., and Fort Worth, Tex.: From Atlanta over U.S. Highway 78 to Birmingham, Ala., thence over U.S. Highway 11 to junction U.S. Highway 80, thence over U.S. Highway 80 to Monroe, La., thence over Interstate Highway 20 to Shreveport, La., thence over U.S. Highway 80 to Fort Worth, and return over the same

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route, serving the intermediate points of Jackson, Miss., Monroe and Shreveport, La., and Dallas, Tex.

(2) Between New Orleans, La., and Houston, Tex.: From New Orleans over U.S. Highway 61 to Baton Rouge, La., thence over U.S. Highway 190 to junction U.S. Highway 165 at Kinder, La., thence over U.S. Highway 165 to junction U.S. Highway 90 at Iowa, La., thence over U.S. Highway 90 to Houston, and return over the same route, serving the intermediate points of Baton Rouge, La., and Orange, Beaumont, and the off-route point of Texas City, Tex.

(3) Between Montgomery, Ala., and the junction of U.S. Highways 11 and 80 near Cuba, Ala.: From Montgomery over U.S. Highway 80 to junction U.S. Highway 11, and return over the same route, serving no intermediate points, and serving the said junction for the purpose of joinder only, as an alternate route for operating convenience only.





ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 30th day of December 1971.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION—ATLANTA, GA.

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION—ATLANTA, GA.

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION—ATLANTA, GA.

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION—DALLAS, TEX.

(Reentitled)

DEATON, INC., EXTENSION—DALLAS, TEX.

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION—DALLAS, TEX.

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION—ATLANTA, GA.

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION—DALLAS, TEX.

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No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION—DALLAS, TEX.

No. MC-106401 (Sub-No. 18)

JOHNSON MOTOR LINES, INC., EXTENSION—DALLAS, TEX.

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION—ATLANTA, GA.

Investigation of the matters and things involved in these proceedings has been made, and said division, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

*It is ordered*, That the petition of interveners in support of the application in No. MC-106401 (Sub-No. 18), to file a supplement to their exceptions, embracing tendered supplement, and the petition of applicant in No. MC-94201 (Sub-No. 56), to supplement its exceptions, embracing tendered supplement, corrected by letter dated September 16, 1971, be, and they are hereby, denied, for the reason set forth in the said report.

*It is further ordered*, That the applications in Nos. MC-1124 (Sub-No. 206), MC-11207 (Sub-No. 233), MC-18088 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. 304), and MC-111231 (Sub-No. 67) be, and they are hereby, denied.

*It is further ordered*, That the applications in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), except to the extent granted in said report, be, and they are hereby, denied.

*And it is further ordered*, That unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service hereof, or within such





additional time as may be authorized by the Commission, such grants of authority made in said report shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, division 1.

ROBERT L. OSWALD,
*Secretary.*

(SEAL)

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## APPENDIX C

Order of the Interstate Commerce Commission in Herrin Transportation Company, Extension - Atlanta, Georgia, served September 6, 1972, overruling petitions for further hearing and reconsideration.

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SERVICE DATE
SEPTEMBER 6, 1972

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division [illegible] Acting as an Appellate Division, held at its office in Washington, D.C., on the 1stday of September , 1972.

No. MC-1124 (Sub-No. 206)

HERRIN TRANSPORTATION COMPANY EXTENSION - ATLANTA, GA.
(Houston, Tex.)

(Reentitled)

McLEAN TRUCKING COMPANY EXTENSION - ATLANTA, GA.
(Winston-Salem, N.C.)

No. MC-2229 (Sub-No. 132)

RED BALL MOTOR FREIGHT, INC., EXTENSION - ATLANTA, GA.
(Dallas, Tex.)

No. MC-11207 (Sub-No. 233)

DEATON TRUCK LINE, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

(Reentitled)

DEATON, INC., EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-18088 (Sub-No. 36)

FLOYD & BEASLEY TRANSFER COMPANY, INC., EXTENSION - DALLAS, [illegible]
(Sycamore, Ala.)

No. MC-59680 (Sub-No. 147)

STRICKLAND TRANSPORTATION CO., INC., EXTENSION - ATLANTA, [illegible]
(Dallas, Tex.)

No. MC-76177 (Sub-No. 304)

BAGGETT TRANSPORTATION COMPANY EXTENSION - DALLAS, TEX.
(Birmingham, Ala.)

No. MC-94201 (Sub-No. 56)

BOWMAN TRANSPORTATION, INC., EXTENSION - DALLAS, TEX
(East Gadsden, Ala.)

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JOHNSON MOTOR LINES, INC., EXTENSION - DALLAS, TEX.
(Charlotte, N.C.)

No. MC-111231 (Sub-No. 67)

JONES TRUCK LINES, INC., EXTENSION - ATLANTA, GA.
(Springdale, Ark.)

Upon consideration of the record in the above-entitled proceedings, and of:

(1) Protest-representation and request for oral hearing of Colonial Refrigerated Transportation, Inc., in No. MC-94201 (Sub-No. 56), filed March 17, 1972, pursuant to publication of grant of authority in the February 24, 1972, issue of the Federal Register, treated as a petition for leave to intervene embracing request for further hearing;

(2) Petition of Colonial Fast Freight Lines, Inc., in No. MC-94201 (Sub-No. 56), filed March 20, 1972, pursuant to publication noted in (1) above, for leave to intervene;

(3) Petition of Bell Transfer Company, Inc., in No. MC-94201 (Sub-No. 56), filed March 22, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(4) Petition of Southern Forwarding Company, in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(5) Petition of Atlas Transit, Inc., in No. MC-94201 (Sub-No. 56), filed March 24, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at the further hearing;

(6) Petition of Arkansas-Best Freight System, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for (a) leave to intervene, (b) reopening for further hearing, and (c) reconsideration in light of evidence to be adduced at further hearing;





(7) Petition of Dean Truck Line, Inc., in No. MC-94201 (Sub-No. 56), filed March 27, 1972, pursuant to publication noted in (1) above, for reopening the proceeding for further hearing;

(8) Motion of applicant in No. MC-94201 (Sub-No. 56), file April 4, 1972, to strike, and, in the alternative to dismiss and reply to the protest-representation in (1) and the petitions in (2), (3), (4), (5), (6), and (7) above;

(9) Petition of Ryder Truck Lines, Inc., protestant, file May 18, 1972, for reconsideration in Nos. MC-2229 (Sub No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(10) Petition of applicant in No. MC-111231 (Sub-No. 67), filed May 18, 1972, for reconsideration;

(11) Joint petition of Mercury Freight Lines, Inc., and Ker Texas Motor Freight Lines, Inc., protestants, filed May 19, 1972, for reconsideration in Nos. MC-2229 (Sub No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(12) Petition of applicant in No. MC-1124 (Sub-No. 206), filed May 22, 1972, for reconsideration and, alternatively, for reopening for further hearing;

(13) Joint petition of Holloway Motor Express, Inc., Consolidated Freightways Corporation of Delaware, Yellow Freight System, Inc., Transcon Lines, and T.I.M.E.-DC, Inc., protestants, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(14) Petition of applicant in No. MC-11207 (Sub-No. 233), filed May 22, 1972, for reconsideration;

(15) Petition of Jack Cole-Dixie Highway Company, protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(16) Joint petition of Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, and Gordons Transports, Inc., protestants, filed May 22, 1972, corrected and supplemented May 30, 1972, for reconsideration in Nos.

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MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(17) Petition of Roadway Express, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(18) Petition of Braswell Motor Freight Lines, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18);

(19) Petition of applicant in No. MC-76177 (Sub-No. 304), filed May 22, 1972, for reconsideration;

(20) Petition of Red Line Transfer & Storage Company, Inc., protestant, filed May 22, 1972, for reconsideration in Nos. MC-2229 (Sub-No. 132), and MC-94201 (Sub-No. 56);

(21) Petition of applicant in No. MC-59680 (Sub-No. 147), filed May 22, 1972, for reconsideration;

(22) Late-tendered joint petition of Alamo, Express, Inc., Central Freight Lines, Inc., Eagle Motor Lines, Inc., and Red Arrow Freight Lines, Inc., protestants, filed May 23, 1972, for reconsideration in No. MC-94201 (Sub-No. 56);

(23) Joint reply by 41 shippers, interveners in support in No. MC-106401 (Sub-No. 18), filed June 12, 1972, to the petitions for reconsideration in No. MC-106401 (Sub-No. 18);

(24) Joint reply by Campbell Sixty-Six Express, Inc., ET&WNC Transportation Company, Gordons Transports, Inc., and Red Line Transfer & Storage Company, Inc., protestants, filed July 12, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(25) Reply by applicant in No. MC-2229 (Sub-No. 132), filed August 14, 1972, to the petitions for reconsideration of the grant in No. MC-2229 (Sub-No. 132);

(26) Reply by applicant in No. MC-94201 (Sub-No. 56), filed August 14, 1972, to the petitions for reconsideration in (9) through (21) above;



(27) Joint reply by Mercury Freight Lines, Inc., and East Texas Motor Freight Lines, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(28) Joint reply by Transcon Lines and T.I.M.E.-DC, Inc., protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(29) Joint reply by Roadway Express, Inc., and Roadway Express, Inc., of Mississippi, protestants, filed August 15, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(30) Reply by Braswell Motor Freight Lines, Inc., protestant, filed August 16, 1972, to the petitions in (10), (12), (14), (19), and (21) above;

(31) Reply by applicant in No. MC-106401 (Sub-NO. 18), filed August 16, 1972, to the petitions for reconsideration of the grant in No. MC-106401 (Sub-No. 18);

(32) Joint petition of Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Deaton, Inc., Gordons Transports, Inc., and Red Line Transfer & Storage Co. Inc., protestants, filed August 18, 1972, for extraordinary relief under Rule 102 of the Commission's General Rules of Practice, embracing a request for review by the entire Commission;

and good cause appearing therefor:

It is ordered, That the late-tendered joint petition in (22) above be, and it is hereby, accepted for filing.

It is further ordered, That the petition in (32) above be, and it is hereby, rejected for the reason that the proceeding in its present posture is not the proper subject of a plea for relief directed to the entire Commission.

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It is further ordered, That the petitions in (1), (2), (3), (4), (5), (6), and (7) above, collectively seeking leave to intervene, and requesting further hearing and reconsideration be, and they are hereby, denied and rejected, respectively, for the reasons (1) that the publication of the grant of authority in No. MC-94201 (Sub-No. 56) was made for the purpose of apprising the interested persons of the additional authorization to use Montgomery, Ala. as a gateway and to serve a specified point in Alabama for purposes of joinder only, which was not included in the notice of authority sought as originally published in the Federal Register issue of August 19, 1965; (2) that the petitioners' stated interests in No. MC-94201 (Sub-No. 56) are generally based either (a) on authority in conflict with the services proposed as set forth in the publication as originally made, and petitioners had ample notice and opportunity but failed to file timely protests at the time in the proceeding in which they now assert an interest or, as in the case of petitioner in (6) above, filed a timely protest and later withdrew said protest, (b) on authority acquired by them after the original publication, which authority does not conflict with the additional authorization necessitating republication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, it has not been shown to be prejudiced by the involved portion of the grant requiring republication, or (c) on authority acquired by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) to the extent it authorized service at Montgomery, Ala. and a specified point in Alabama for purpose of joinder only; and (4) that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to the authority acquired by certain of the petitioners subsequent to the original publication, there is no showing that such evidence would warrant a result different than that reached in the report and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purposes of joinder only.

It is further ordered, That in view of the action taken in the next preceding paragraph, the motion in (8) above be, and it is hereby, overruled.

It is further ordered, That the proceeding in No. MC-111231 (Sub-No. 67), be, and it is hereby, reopened for reconsideration on the present record.





It is further ordered, That the petitions in (9) and (11) through (22) above, be, and they are hereby, denied, for the reasons that the findings of Division 1, in its report and order of December 30, 1971, reported at 114 M.C.C. 571, in Nos. MC-1124 (Sub-No. 206), MC-2229 (Sub-No. 132), MC-11207 (Sub-No. 237), MC-18068 (Sub-No. 36), MC-59680 (Sub-No. 147), MC-76177 (Sub-No. [illegible]), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), are in accordance with the evidence and the applicable law and that no sufficient or proper cause appears for reopening the proceeding for reconsideration or further hearing.

It is further ordered, That, unless compliance is made by applicants in Nos. MC-2229 (Sub-No. 132), MC-94201 (Sub-No. 56), and MC-106401 (Sub-No. 18), with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grants of authority made in the report and order entered herein on December 30, 1971, shall be considered as null and void and the applications shall stand denied in their entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

JOSEPH M. HARRINGTON,
Acting Secretary.

(SEAL)

NOTE: This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

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## APPENDIX D

Transcript of hearing before Hon. John E. Miller, United States District Judge, on November 1, 1972.

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC.: ET AL | : | |
| VS. | : | FS-72-C-05 |
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION and JOHNSON MOTOR LINES, INC.; ET AL | : | |

Before:

HONORABLE JOHN E. MILLER

Senior District Judge

Fort Smith, Arkansas.
November 1, 1972.
9:30 a.m.

APPEARANCES:

REPRESENTING THE PLAINTIFFS:

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Don A. Smith, Esq.
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APPEARANCES, CON'T.:

REPRESENTING THE PLAINTIFFS: (Con't.)

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C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing on Temporary Restraining Order before Honorable John E. Miller at 9:30 o'clock a.m. on the 1st day of November, 1972, at Fort Smith, Arkansas; that the attorneys present and participating are as heretofore set out; that during said Hearing the following evidence was introduced and proceedings were had in connection therewith, towit:

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PROCEEDINGS

9:30 a.m. o'clock. November 1, 1972.

Before the Court.

MARSHAL. Everyone will rise. (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

THE COURT. Now, gentlemen, this is the day that was specifically set for on the application of plaintiff for a temporary restraining order. Since that time in the interest of time, in the interim time there has been some others matters developed and the Court has before it now the matters, other matters that has not been determined. That is the application for or the Motion of certain interventions. Let me get my papers straightened out here.

THE CLERK. I have several other exhibits here just as soon as I can get a file mark on them.

THE COURT. What are they?

THE CLERK. Affidavits and ---

THE COURT. That is all right. I feel like some understanding should be reached about





the Motion of the Lorch Westway Corporation and other shippers to intervene here. I have given that some consideration, some myself but I do not believe that I have any briefs except -- I don't believe I have any briefs on that question at all. Mr. Harper, you did not file any, did you?

MR. SMITH. Yes, Your Honor, we filed a brief in opposition to the Motion to Intervene on behalf of all of the plaintiffs. That was filed on Monday.

MR. JONES. If it please the Court I filed a brief this morning on behalf of the shippers.

THE COURT. I know you did. I believe I have it in here.

MR. HARPER. If the Court please, may I present the out-of-town counsel for the plaintiffs?

THE COURT. Yes, sir.

MR. HARPER. This is Mr. Phineas Stevens of the Mississippi bar. Mr. Robert E. Joyner of the Memphis, Tennessee, bar.

THE COURT. I have met those gentlemen and the proper order will be entered to allow them to represent their clients in this case.

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MR. JONES. On behalf of the defendants I would like to present out-of-town counsel for the defendants. Mr. Donald E. Cross, representing Johnson Motor Lines; Mr. Jerry C. Prestridge, representing, Austin, Texas, representing Red-Ball Motor Freight; Mr. Courts Oulahan of Washington, D.C., representing the shippers; and Mr. Maurice F. Bishop, Birmingham, Alabama, representing Bowman Transportation.

THE COURT. The proper order will be entered and we are glad to have you, the proper orders for your representation in this case. Now, going to this question of the application of Lorch Westway Corporation, as I say now I have Mr. Jones brief that was submitted this morning in opposition; yesterday the plaintiff presented a brief of October 31st in opposition to intervention, and also filed certain exhibits and this morning Mr. Jones submitted a brief in support of the petition. Now, I have not had time, gentlemen, just to be prefectly frank with you I have not had time to consider that question that I think ought to be considered. I am, I think, entirely familiar with the applicable statutes. There are some other





things in this case that I think ought to beconsidered. There are several decisions that I have not read that are applicable and most of them apparently in favor of admitting them under that provision of the statute showing an interest in the outcome of the proceeding and that may be true, but I have got to take a day or two to dispose of that Motion but at the same time since you are all here if anyone desires to make any statement or any argument on the matter I would be glad to hear it because it would help me in disposing of it within the next day or two and then we will take up the question of whether or not a temporary restraining order should be entered. Is that satisfactory to you all, now?

MR. JONES. Yes, Your Honor.

THE COURT. We might have to try it piecemeal but this case somebody ought to cut it up in to pieces several years ago.

MR. JONES. May it please the Court, Mr. Oulahan, representing the shippers, would like to make a brief argument.

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THE COURT. I can hear him right now.

MR. CULAHAN. May it please the Court, Your Honor, we are asking intervention rights here under 28 U.S.C. Section 2323 and Rule 24 A 1 of the Federal Rules of Civil Procedure. We are not asking permissive intervention nor are we asking intervention under Rule 23 as a Class Action. We are not here as a Class, we are here because we are a party before the Commission and I might say, Your Honor, that the case cited by our opponents in the brief filed with you, which is Sprock against the United States, holds that we have a right to be here. I am sure it was a mistake but if Your Honor will take a look at the page before the quotation in their brief you will find that Justice Brandies said that the shippers in that case had to right to intervene in the Commission proceeding and by that intervention being granted to them they had a right to intervene in the District Court proceeding. What Justice Brandies in the portion quoted by my colleagues was saying was that the shippers had no independant right to go to the Supreme Court where the applicants, that is, the carriers involved were not going up to



to the Supreme Court and that is all that is [illegible] Your Honor.

THE COURT. I glanced at that case yesterday but I will look at it more thoroughly.

MR. CULAHAN CONTINUES: Now, the important point, Your Honor, is that the third paragraph of section 2323 of Title 28 under which we are coming in does say corporations interested in the controversy or the question before the ICC, or in any action commenced under the aforesaid, as we have here, may intervene. As Your Honor has seen from our memorandum in the Brotherhood of Railroad Trainmen in 1947 the Supreme Court the Chief Justice held that the statute involving intervention means that not that the District Court has discretion but if the intervenor wants to come in and he is a party in the ICC proceeding he has a right to intervene, and, Your Honor, that was squarely held in Salem Transportation Company which we cited to you in 1967 before the Southern District of New York. In Salem, Your Honor, the District Court went ahead and using Brotherhood said the ---

THE COURT. You are talking now about the case you cited in your brief?

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MR. OULAHAN. Yes, sir. The important case we would like Your Honor to really look at is United Transport against United States which was a case just across the border in the Western District of Oklahoma in 1962. That case holds that a shipper who intervened after the hearing before the ICC, after the report by the Hearing Examiner, has a right to be a party in the District Court of review action and that is exactly our position. This is the point which the protestants are using that we did not participate in the hearings, that we are somewhat a Johnny-come-lately, while United Transport is an answer to that because an intervention was allowed of right by the District Court in Oklahoma to shippers who were in exactly the same position as we were. And we have also cited Your Honor Frozen Foods Express which is a recent decision in the Western District of Texas on intervention of right by Judge Seple and other authorities. Now, Your Honor, we ought to be here because we are the principal reason why the Commission found in favor of the three defendants, the carriers. As Your Honor has read in the Commission decision it





was lack of service to us that was responsible for the reversal by the Commission of what the Hearing Examiners had held and that is the prindipal issue we have here, the plaintiff has in three places in its complaint cited us out intervention and our interest as being some kind of undue prejudice by the Commission. Well, Your Honor, we ought to have a right to be here to protect ourselves and we believe we can make a contribution to the Court. Now, Your Honor, the forty-one shippers we are talking about are from all over the United States. They come from the New England area, the Mid-Atlantic area, the Carolinas and the Southwest that represent a broad range of products, everything from Olincraft Industries which makes paper products and ships via Johnson the ingredients that go in to the paper products to the Ethyl Corporation which ships chemicals; we are a representive cross-section, Your Honor, of the traffic that was involved in the Commission proceedings and we believe that we can represent to this Court in this proceeding not only in the TRO but in the trial on the merits and we can make a contribution to persuade

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the Court that the TRO should not be granted and it is a matter of right and the substantial evidence of record, the Commissions' actions ought to be affirmed. Now, we are not in here to create delay. We will coordinate our efforts as we did before the Commission with Johnson's counsel,if necessary we can submit or join in briefs together. Johnson cannot represent us, we have an interest that is different from Johnson's. That interest however is allied with Johnson because we believe Johnson can give us the kind of service we want. And, Your Horor, if the TRO is entered we are just going to be sitting here not getting that service. Among the affidavits that you have is one from Mr. Sloan who is the Traffic Manager for Johnson who states under oath that he is still getting complaints from the shippers. It is not a situation that has changed a bit and we believe that we would be injured by any kind of delay that would put in to effect the certificate granted to Johnson by the Commission. Thank you, sir.

THE COURT. All right, Mr. Oulahan, as stated now I would be glad to hear anybody





else on the question of intervention: then I want to take up this question of Temporary Restraining Order. Mr. Oulahan has covered his and has had something to say about that which is perfectly all right because I want to carry these things along and I imagine, Mr. Harper, since you -- or Mr. Smith -- since you are the one that is asking for the entry of Temporary Restraining Order I expect I had better listen to you first.

MR. HARPER. I will leave that to Mr. Smith. As Your Honor knows I have just recently have been out of the office --

THE COURT. I do know that you have not been in your office -

MR. HARPER. And I am not too familiar with this particular case.

THE COURT. You are not entirely by yourself on that but I will be glad to hear from you. Let me ask you just a question before we go in to that. Now, Bowman Transportation and Johnson and Red Ball are in Court in opposition to that as well as -- I am treating your clients as

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being ---

MR. CULAHAN. Thank you.

THE COURT. I am treating your clients, I am considering your clients right along with one of those protesting, they are among those, in opposition to the Temporary Restraining Order. Now, who else is here on that particular question?

MR. JOHNSON. We are representing the ICC, Your Honor.

THE COURT. I think I have the rest of these spotted all right. You know that rather insenable order I entered there about when this case was filed - that was because of the lack of communication. I was getting ready to have a Hearing on that matter and Mr. Johnson had got some garbled news and so did I and I could not understand it so I just entered that order so that no body else would understand it, I wanted to be as mystic about it as everybody else. Now, Mr. Smith.

MR. SMITH. Very well, Your Honor --

THE COURT. What did you say you had there you had there this morning?





THE CLERK. Sir?

THE COURT. What did you say you had there this morning?

THE CLERK. The plaintiffs filed affidavits this morning. -

THE COURT. I know that.

THE CLERK. Then this morning before we came in to Court Mr. Jones filed a brief, memorandum brief of intervening defendant, Bowman Transportation, and also an affidavit --

THE COURT. Does anybody represent Red Ball?

MR. PRESTRIDGE. Yes, sir.

THE COURT. Have you filed any affidavit or any brief in opposition to that?

MR. PRESTRIDGE. Yes, sir. I filed affidavits yesterday morning.

THE COURT. Well, I have not gotten them yet.

MR. PRESTRIDGE. I filed them with the Clerk. I say yesterday morning, I think it was yesterday afternoon.

THE COURT. That was proper.

MR. PRESTRIDGE. And served Mr. Smith.

MR. SMITH. If the Court please ---

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MR. JONES. Before we begin what was that that you were referring to that you just filed?

MR. SMITH. In the course of stating the Arkansas Best authority, an affidavit, one was mis-stapled, it was someone elses' affidavit and I substituted the correct one, the Arkansas-Best affidavits by Gary Bronson attesting to their authorities and I think you have the correct copies now.

MR. JONES. Thank you.

MR. SMITH. If the Court please I think in an orderly course I would move the introduction of the affidavit that we have filed with the Clerk in support of our Motion for the Temporary Restraining Order.

THE COURT. All right.

MR. SMITH. Those will be the affidavits of Gary D. Bronson on behalf of Arkansas-Best Freight System, Inc.; John M. Records on behalf of Yellow Freight System, Inc.; James W. Connor on behalf of Roadway Express, Inc, and Roadway Express, Inc., of Mississippi; Frank G. Campbell on behalf of Campbell 66 Express, Inc.; William P. Goodwin on behalf of Gordon Transports, Inc.; H.M. Kirk on behalf of RT & WMC Transportation





Company; J. Montague Williams on behalf of Mercury Motors, Inc.; L.D. Davis on behalf of Red Line Transfer and Storage Company, Inc.; and Clarence Levi on bahalf of Mercury Freight Lines, Inc.; all plaintiffs in this proceeding. I think it proper at this time, Your Honor, to give a brief summary of the events that have transpired and cultimating in this particular hearing here today. The actions which were commenced before the Interstate Commerce Commission were commenced back in 1965. Extensive hearings were held before what are now referred to as Administrative Law Judges and then Hearing Examiners and we have attached to our complaint a copy of their Report and Order --

THE COURT. Who were the original plaintiffs when this case was instituted back in 1965; do you recall?

MR. SMITH. The applicants in this proceeding --

THE COURT. The applicants is what I meant to say.

MR. SMITH. There were ten of them.

THE COURT. Then that is all right.

MR. SMITH. They included Roadway Express,

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Inc., Red Ball Motor Freight, Inc., Deton Truck Line, then it was re-entitled Deten, Inc., Floyd and Beasley Transfer Company ---

THE COURT. I have got them now.

MR. SMITH. They are all listed on the first page of the Examiners Report.

THE COURT. Yes.

MR. SMITH. Subsequently this matter after several pleadings were filed a decision was handed down by Division One and served January 24, 1972, reversing in part the recommended order of the Hearing Examiners ; they had recommended the denial of all of the applications and the Commissions Division One would issue Certificates of Authority to Johnson, Bowman and Red-Ball, intevenors in this proceeding. Subsequently pleadings were filed and Division One acting as an Appellate Division on September 1, 1972, entered an Order, the effect of which as far as this proceeding is concerned would issue those Certificates. That was served on September 6, 1972. Thereafter certain of the now plaintiffs in this proceeding filed with the Commission as allowed by law their application to declare this matter of transportation im-





portance and to gain consideration by the full Commession.

THE COURT. What is that you stated now?

MR. SMITH. Some of the plaintiffs after the issuance of the September 6th Order filed their Petition for a Determination and Announcement that the proceedings involved and the issue of general transportation importance - we mentioned this in our complaint because it was pending at that time ---

THE COURT. What was the purpose of that?

MR. SMITH. This is allowed by the Statute and the Rules of the Commission and the Commission at that time, the whole Commission can treat this matter as general transportation importance and review the entire proceedings or those segments that it desires to review.

THE COURT. All right.

MR. SMITH. The Commission by Order dated October 2, 1972, and served October 6, 1972, denied those Petitions and therefore did not consider it the matter of general transportation importance. Now, after the September 6th Order was entered by the Commission contact was made by a representive of the plaintiffs,

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Mr. William O. Turney, an attorney in Washington, D.C. He regularly represents Roadway Express, Inc., and Roadway Express, Inc., of Mississippi. The office of the general counsel of the Interstate Commerce Commission was sent a letter advising the Commission that litigation would be instituted in opposition to the issuance of the Certificates to Bowman and Johnson and Red Ball. On the 13th day of September Betty Jo Cristian, an associate general counsel of the Interstate Commerce Commission, sent Mr. Turney a letter and she requested that - well, she advised that the ICC would withhold the issuance of those Certificates until October 6th pending the filing of the contemplated law suit by these plaintiffs, and as you know and as the file reflects on October 4, 1972, within the time limit the complaint was filed in which we requested that a stay of the issuance of those Orders be granted. Prior to the filing of that complaint we had advised Mrs. Christain that we were going to file it in this Court and we told her that we would file it during the week of October 2nd. At that point in time our representive stated that she was going to allow





the representives of Bowman, Johnson and Red-Ball this information and notified them that the suit was going to be filed. We filed the suit and as the Court has referred to in the preliminary statement the United States Attorneys' Office for the Western District of Arkansas appeared pursuant to a notification that the suit had been filed and advised this Court that it would not be necessary to issue a Temporary Restraining Order and that the Commission would voluntarily withhold the issuance of those Certificates. In the meantime Mr. Donald Cross representing Johnson Motors had wired the Court and the Clerk asking that he be notified at such time when the temporary restraining order hearing would be heard. Now, on October 18, 1972, the Commission sent a notice to all parties of record in these proceedings that the Court action had been instituted. Thereafter at the request of Mr. Cross and through discussion with the Interstate Commerce Commission this Court entered the Order asking that this matter be heard today. Now, on behalf of all the plaintiffs we appear in support of this Court issueing the Temporary Restraining Order. We have filed

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with the Court the affidavits of various representives of the plaintiffs and collectively these plaintiffs are in opposition to all of the issuence of the certificates of all these carriers, Johnson, Bowman and Red Ball. We have also been favored with affidavits from Johnson Motor Lines, Red Ball, and this morning we received an affidavit from Bowman. No one has contested the jurisdiction in so far as the issuance of the Temporary Restraining Order and I do not think the record need be burdened by a discussion of the jurisdiction. We submit to the Court that the consideration to be given here is whether or not irreparable damage will occur to the plaintiffs if the certificates are issued by the Interstate Commerce Commission while this case is pending before this Court and a final determination on the merits has not been made. There are provisions within the Statutes and the Court certainly is aware of these Statutes which allows this Court at this time to enter a Temporary Restraining Order upon the showing of irreparable damage. I think the Court since you have not had an opportunity to read the affidavits can read the affidavits





and you will find essentially these factors disclosed in these verified statements; first, that tese carriers that are plaintiffs who are asking for the Temporary Restraining Order are presently carriers that are serving the public throughout the entire territory that could be served by Bowman, Johnson and Red Ball if these certificates were issued. As such the public is not being denied service because service already exists for those people as a result of the service performed by these parties, these plaintiffs and others. Secondly, you will find that these are carriers that their entire livelihood is based upon offering service to the public. They have purchased equipment, erected terminals, hired employees, made their own investigations concering highway conditions and the best and most feasible routes to follows and they are performing the service for the public in the area encompassed by these proposed Grants of Authority. These affidavits also reveal to the Court in varying amounts of statistics that if this Temporary Restraining Order is not granted serious diversion of traffic will occur to the plaintiffs and other carriers. Now, the

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effect of the diversion of traffic does not simply go to a lessening of income because it also would result in a curtailment of employment, lack of purchase of future equipment, expansion of terminal facilities and the possibility of reducing schedules so that the lack of income could be made up of the curtailment of services to the public. So rather than this service being hurt by the grant of the Temporary Restraining Order it actually will be helped and encouraged if the Court were to grant the Temporary Restraining Order. I noticed in the affidavits submitted by Red Ball and also by Johnson that this matter is actually covered in those affidavits. Both Red Ball and Johnson state to the Court that they now are performing a two-line service from all of the areas involved in these applications but if the Temporary Restraining Order is not entered and the certificates are permitted to be issued they will then introduce a single line service. Johnson, who interlines with the plaintiffs and other carriers, contemplates gross operating revenues for a six-month period of almost one million dollars. Now, where is that revenue





going to come from? It is going to come from the pockets of the plaintiffs and the other carriers who are now presently rendering this service to the public from that area. The affidavit of Red Ball states that they are presently interlining with T.I.M.E.-D.C., Inc.; Johnson with Bowman with Gordon with Central and I am naming all of the parties to this litigation, but if this certificate is allowed to be issued then they are not going to interline with these carriers any more. In other words the effect of the granting of the Temporary Restraining Order is a preservation of the status quo or the current conditions under which these carriers are now operating. It affords no detriment to these three carriers. It affords an opportunity for this service to be rendered to the public as it is now being rendered and it also gives everyone an opportunity to consider this case on its merits. One other consideration that the Courts have given in proceedings of this nature is the possibility of success the ultimate decision to be reached by the Court. I do not intend to argue the merits of this case. I do not think

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it is appropriate in this proceeding and I would not attempt to do so. I would only call the Courts' attention to the fact that in our complaint we have enumerated what we believe to be allegations to show that the merits are certainly in question and I think the Court can take in to consideration one basis factor, the Hearing Examiners who were there, who heard the testimony denied all of the applications; the Division reversed those Hearing Examiners on three certificates, Bowman, Johnson and Red Ball. So within the Interstate Commerce Commission there is a question as to whether or not these certificates should have been issued by the personel hearing the cases and deciding them. We feel like that we have met the necessary criteria for establishing that a Temporary Restraining Order should be entered; first, through these affidavits we have shown that there will be irreparable injury; secondly, we have pointed out and basically it has been admitted that no injury can occur to these three who would receive these certificates because they do not have that authority now. If they are allowed to institute those operations by the





denial of our request for a Temporary Restraining Order and then subsequently this matter was reversed so that they would not have the issuance of these certificates greater detriment could occur to them. We have prepared and will submit to the Court authorities which adequately deal with the issuance of a Temporary Restraining Order. We would invite the Courts attention to the case of Westinghouse Electric Corporation verus Singer Sewing Machine Company, a Seventh Circuit case, and Interstate Commerce Commission verus Hudson Transportation Company, a Southern District of New York case. Also would refer the Court to the Benson Hotel Corporation verus Woods case, an Eighth Circuit decision in 1968. We will put this in final form and submit it to the Court, but I think that the facts as presented by the evidence and as contained in the record before the Interstate Commerce Commission and alluded to in the pleadings before this Court clearly establish that at this time a Temporary Restraining Order should be granted. May I have one second, Your Honor?

THE COURT. Yes.

(Mr. Smith confers with other attorneys.)

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MR. SMITH. In conclusion, Your Honor, I would advise the Court this case has been pending for seven years. There is no immediate urgency for the institution of the service as a result of the issuance of these certificates. I think possibly though arguments and/or affidavits that have been introduced before the Court the Court might have the impression this is an argument between giant motor carriers. There are some motor carriers in this proceeding that would be considered large corporations; on the other hand there are participants in this proceeding that are exceedingly small and I would all the Courts attention to Holloway Motor Lines, Red Line Transfer and Storage, ET & WNC and some of these others; and I would also refer the Court to pages 26 and 27 of the Examiners Report in which the Examiners after hearing the testimony in this proceeding makes the statement that Holloway has subject to diversion seventy-one percent of the tonnage that it handles; that Red Line would be put out of business and, interestingly enough the Division does not comment and that has not been chanllenged by these three who seek the grant of these applications.





So I think for the preservation of the national transportation policy as it exists today the Temporary Restraining Order should be issued and this matter be fully litigated before the assembled Three Judge Court. Thank you, Your Honor.

THE COURT. All right.

MR. JOHNSON. If it please the Court, I have been asked by the Interstate Commerce Commission to appear on its behalf. The United States through the Justice Department has not at this time decided what position they will take in the proceedings, so my remarks will be confined to the Interstate Commerce Commission and for the most part the Interstate Commerce Commission will defer to the intervening intervenors and as to the arguments I would ask merely to set forth what the Interstate Commerce Commission believes to be the grounds for a Temporary Restraining Order; first, have the petitioners shown that they are likely to succeed on the merits, and intertwined with that is the persumption of the validity of the regulating orders, to the presumption that the Interstate Commerce Commission is correct and its orders

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must be regarded in order that if the petitioners should succeed in having a Temporary Restraining Order issued at this time. The second, will they be irreparably damaged, and, third, will it harm other parties, and, fourth, where lies the public interest. We get these where they are most simply stated from Virginia Petroleum Jobbers against Federal Power Commission, 259 Federal Second, 921 to 925. With that short elemental statement of law I am sure the Court is very familiar with I will defer to the intervenors. Thank you.

THE COURT. All right.

MR. CROSS. If the Court please, I am Donald E. Cross, representing intervening defendants Johnson Motor Lines, Inc. This matter is of such importance to each of the intervening defendants, Your Honor, that each of us would like to be heard briefly.

THE COURT. That will be very well, you may do that.

MR. CROSS. I will go first and my colleagues will follow.

THE COURT. That is very well. Go right ahead.





MR. CROSS. Johnson was the first of the applicants to file their application before the Commission, those applicants being a group of nine carriers who were seeking related but not the same service and that is something the Court must bear in mind. Each of these grants of authority authorize somewhat different points and territories to be served and it is for that reason, Your Honor, that the sixteen and now seventeen plaintiffs you will find a great deal of diversion of opinion on their part as to which of these applications are opposed. For example only eight of these plaintiffs oppose the Johnson application before the Commission --

THE COURT. I noticed that.

MR. CROSS. Actually there is nine now, Roadway has intervened here as a plaintiff only yesterday or the day before was also one of those opposing Johnsons' application. You will find the same thing true with the other applicants and now potential certificate holders coming before you. In short we do not have some eighteen plaintiffs saying that they are all going to be hurt by any one of these applications.

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In other words if there is harm to them at all and I seriously dispute that, in any event I do not think the harm irreparable within the meaning of the Statute, it is diverged among this group of people in such a way as you do not get the fullcompact of nineteen plaintiffs saying they are all going to be hurt by each of these applicants. It has been attacked you will find that they proceed collectively against all three as though the same impact was from each of us. But that is not the case. I do not want to take the Court's time today to spell out all of these varying interests. I think it is sufficient for this purpose to show that the interest is not the same as to each of the applicants and certainly not the same as to the Johnson application.

THE COURT. I detected that from the little study that I have made. That is the thing that causes me more trouble, that is, contemplated trouble than any other one issue in the case is separating whose who and why and so forth and so on --

MR. CROSS. If Your Honor please, prehaps this will -- this thing that I will next cover





runs through all of them. When you read the other plaintiffs affidavits who have the burden of establishing irreparable harm the main element I think this Court must look to you will find that they complain basically of new competition which will divert traffic from them, divert shipments from them. Now, the case that which I have taken the priviledge of referring to is the Frozen Foods express verus United States, Western District of Texas, June 28, 1972, where Judge Suple, United States District Judge, denied a Temporary Restraining Order simliar to the ones or almost identical to the ones that the plaintiffs seek here on the grounds primarily, and I quote "the Court finds that the only injury plaintiffs might suffer by a denial of a stay would be increased competition which in the Interstate Commerce Commissions opinion presumptively valid is in the public interest. Such injury of anycannot be said to be irreparable." End of quote. If the Court please ---

THE COURT. What is the name of that case?

MR. CROSS. I have a copy here for the Court. It is Frozen Foods Express, Inc.

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THE COURT. I have it in my library. Is it cited in your brief?

MR. CROSS. No, that is not cited in my brief and it was for that reason that I thought that I had better give the Court copies of it.

THE COURT. That is all right.

(At this time Mr. Cross hands papers to the Court.)

MR. CROSS. If Your Honor please, the Interstate Commerce Commission is the Agency of Congress that must look to this transportation picture. In this situation it consulted the applications of ten large carriers and held a hundred and forty-nine days of hearings and is probably one of the largest cases of this type that the Commission has ever considered. It has considered it absolutely fairly. Pleadings briefed, briefs that are mammoth and with that consideration it has deemed to grant the applications of three of the ten. They did not grant all ten of the applications, there were three and the basic grounds for that grant is that the existing transportation system composed of these plaintiffs had not been rendering these adequate service to the public and that the public needed the transportation





of the three successful applicants. Now, the plaintiffs have told you that, one, they are serving the public today but they have been found by this Agency not to be serving it adequately and it is for that very reason that the Commission wants to issue the certificates in this case. No. Two, they tell you that this new competition will divert traffic from them. First I would say that based on the Frozen Foods case and others that Mr. Bishop will cite to the Court the mere possible diversion of traffic, loss of business by these plaintiffs and the increased competition they would receive from these new certificates is not a irreparable damage within the meaning of the Statute. There are two cases holding that. So that is all that they have tried to show this Court their damage would amount to. With that gone they do not need a primary element that this Court must find specifically that they would suffer irreparable damage. But just for a moment, Your Honor, assume for purposes of argument that the damage to them, the potential loss of business as they say and the new competition, assuming for purposes of argument that it is on - that

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this Court should consider, the Court must also balance that harm against the harm to the intervening defendants before you here. I have submitted the affidavit of Mr. Sloan setting forth in detail the steps taken by Johnson to prepare itself to institute the service that the Commission has found to be needed. Using one figure alone there is some two hundred or two million dollars of new equipment which has been contracted to purchase; they have taken innumerable other steps preparatory to starting operations. If this Court restrains the Commissions issuance of the certificates those steps will be for naught. They are not the kind of things that Johnson can go back and recoup. They would have to be done over again in the event and we think the likely event that this Court confirms the Commission on the merits. That is I submit irreparable damage, that type of loss and waste that would incur were the Court to restrain the issuance of these certificates. Now, cousel for plaintiffs points to Johnsons' affidavit and says "well, we project revenue as a result of operations under the new certificate." If you will read Mr. Sloan's affidavit carefully,





Your Honor, you will find that not one dollar of that projected increased revenue will be diverted from any of the plaintiffs in this case. It is business that Johnson is handling today with carriers other than the ones complaining to this Court and not from these plaintiffs. That is significient. And lastly, Your Honor, Mr. Sloan's affidavit contains some assistance of these plaintiffs. Again assuming, and I go back to my original point that new competition and diversion of traffic to these plaintiffs is not irreparable harm within the meaning of the Statute. But assuming argumentatio that it may be so considered by the Court Mr. Sloan's affidavit contains financial statistics of some of the plaintiffs, namely the ones opposing Johnson, it shows for example - and we have affidavits here from Gordon Transports today, Gordon's being one of the plaintiffs opposing Johnson, Gordon's had net operating revenues in 1971 of forty-eight million dollars, had a net income of almost two million dollars, an operating ration of ninety two percent, very favorable in the motor carrier industry. Campbell, another one of the plaintiffs opposing Johnson,

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had operating revenues in 1971 of twenty-four million dollars, an operating ratio of ninety-two point five (92.5), very favorable --

THE COURT. What do you mean by "operating ratio"?

MR. CROSS. That is the ratio of the carrier's total sales, revenues, to total expenses; and in the motor carrier industry as we point out in the affidavit that ratio is said to be healthy for a motor carrier at about ninety-three (93) and the two ratios for two of the plaintiffs that I read to you are less than ninety-three (93), in other words in a healthy position. I will not go into detail, all the other figures are there, except to point out that assuming argumentatio only that new competition is a factor that this Court can consider as irreparable damage these carriers are more than able financially to withstand increased competition whcih the Interstate Commerce Commission has said is needed in the public interest. I want to mention to the Court that when Mr. Sloan's affidavit was prepared Railway Express was not a plaintiff. I have worked up





the financial statistics of Roadway Express just overnight after having learned that they were in the case just to point out to the Court Roadway had net operating revenue in 1971 of two hundred ninety eight million dollars ($298,000,000.00); net income of eighteen million ($18,000,000.00), almost eighteen and a half million ($18,500,000.00); of all the plaintiffs this is obviously the strongest and assuming argumentatio new competition constitutes irreparable damage this carrier could well withstand it. That will conclude my remarks, Your Honor.

THE COURT. Thank you.

MR. CROSS. Thank you.

MR. SMITH. Mr. Drew L. Carraway of Washington arrived late and I would like to introduce him to the Court and ask that he be allowed to participate as one of the plaintiffs, as one of the attorneys for the plaintiffs.

THE COURT. I intended to remark about that but Mr. Cross had me mesmerized and I overlooked that. Glad to have you, Mr. Carraway. All right, the next one.

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MR. BISHOP. I am Maurice F. Bishop and I am appearing for Bowman Transportation, Inc., resisting the application for a Motion for a Temporary Restraining Order which we will refer to for expediency as a TRO. As has previously been suggested this case actually has its beginning in July of 1965 when the series of ten applications was filed with the Commission. I think it might be well and perhaps important in consideration of whether to issue a TRO to note that the hearings in this case commenced on March 21, 1966, and it has been appropriately described by the Commission as being one of the longest and the most thoroughly considered cases in the Interstate Commerce Commission history. Suffice to say there were 933 public witnesses who appeared and testified to an impelling need for the various service proposals inherent in the application. The hearings continued almost without rest for 147 trial days. The transcript of testimony in this proceeding covers 23,446 pages -- 433, I am sorry. There were 1989 exhibits, some composed of hundreds of pages that were introduced and considered in the various administrative process and procedure that was involved in this or these



cases. Following all of that series of extended hearings the briefs, exhaustive briefs were filed to the Examiners in the case by all of the parties or on behalf of all of them. After the briefs were filed to the Examiners they issued or suggested a recommended Report or Order and then exceptions were filed to the recommended Report and Order of the Examiners and replies to those exceptions. Then Division One of the Commission issued what I respectfully submit an Answer that would not be questioned as perhaps the most exhaustive and certainly one of the best considered and reasoned Orders that has ever been issued in Commission history, containing 234 pages which the plaintiffs with commendable candor portions of which the plaintiffs stated in their Petition for Reconsideration they had not read or considered at the time they filed their Petition for Reconsideration.

THE COURT. Are the pages in that report -- they are not readable in my eyes and I cannot find anything that is sufficiently magnified so that ---

MR. BISHOP. We will get those blown up for you and make them available to you for your

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inspection. As a matter of fact we will file with theCourt at this time what all of the parties -- we will file with the Court a blown-up copy of that Appendix for the working members of the Court. That is an exact reproduction, Your Honor, of the portion to which you have referred and that is the Appendix to the Order of the Division, Appendix C, beginning on page 636 and continuing through ---

THE COURT. That is right.

MR. BISHOP. 756.

THE COURT. All right, I am glad to have that.

MR. BISHOP CONTINUES: Yes, sir. Those Petitions for Reconsideration were filed and replies to those Petitions for Reconsideration were filed and then the Division issued their -- Division One as an Appellate Division issued their Order denying the Petition for Reconsideration. Then the plaintiffs filed before the Commission Petitions for Declaration of General Transportation Importance and that was denied. I mention that procedure simply for the purpose of illustrating and emphasizing the fact that the very issue that is before Your Honor this morning



already has been exhaustively considered by the Administrative Agency which has the expertise in the field and to which Congress has delegated and charged with the responsibility of making the factual determination of the issue. Now, it has been argued this morning from a factual standpoint and as I understand from a hurried look at the affidavits and as I certainly understand from the very able presentation by my friend Don Smith this morning the issue involved is that these plaintiffs now say that if these Orders become effective we have a potential diversion or loss of traffic which we in which we are participating today to some extent. That was the principal ground of opposition. There were two grounds of opposition from the plaintiffs that runs throughout this record and that is exhaustively considered by the Commission. The first was that there was actually no need because they contended that a satisfactory service presently existed, either single line or in interchange. that is where the one carrier will transport the goods for a part of the shipment and another carrier will then take over the shipment

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and transport it beyond, interling freight or interlining equipment. They said, Number One, that under the Act there is no public need, and, secondly, that if a public need does exist for the service that it would have an adverse or serious effect upon the existing carriers. That was their thrust of their entire opposition throughout the proceedings. Now, that very issue - and, incidently, that is the issue they now present to the Court with the additional burden that they must show now not that they would be adversely affected but they must now satisfy this Court beyond any reasonable doubt to the Courts' reasonable satisfaction that irreparable damage would result to the plaintiffs. With that additional burden imposed by virtue of the Statute and under the TRO that issue has already been determined a minimum of four times by the Administrative Agency. It has already been briefed four times exhaustively. It was briefed on the original briefs to the Examiners. And some of those briefs contained three and four hundred pages. It was briefed on the Exceptions and replies thereto to the Examiners Recommended Report and Order. It was briefed



on the Petitions for Reconsideration and replies thereto. And in so far as Bowman Transportation and the other successful plaintiffs are concerned most of those it was briefed on the supplemental exceptions Motions to file and the replies thereto. Now, what Your Honor is now called upon to determine were briefed and exhaustively considered by the Commission and I might add for emphasis that the Report of the Commission was a unanimous decision that there was no serious adverse effect on the protestants, the plaintiffs here. As a matter of fact the Report, the Order of the Division refers to this matter on page 114, MCC page 610, and that is a portion --- the top of page 611, and that is the portion of the Order that directs itself to the contentions made by the plaintiffs here and made by them four previous times before the Commission; three of those times as stated here as shown by the record unsuccessful. I quote that portion beginning at the bottom of page 60 "and undoubtedly granting all portions of the eight remaining applications might have serious adverse consequences on the existing motor carrier's services." It is also true that

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the above described Grants of Authority would subject some of the protestants traffic to the possibility of diversion. That is the argument made here - with the exception of one carrier here, Holloway, however, protestants have not shown that they would be seriously adversely effected by such grants; nor does it appear that the operations of any existing Carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Citing the Liberty-Trucking, Case, "Whereas, the operations of Holloway which transports specified commodities in a limited territory may be seriously adversely effected the gains to be derived by the shipping public in general far out-weigh any adverse effect this carrier or any other protestant may experience." End of quote. Now, with respect to Holloway, as shown here, that carrier had only limited specified commodities as known. And it is critically important to note and remember that Holloway operated only between the Gadston and Birmingham territory and Kansas City; that not only had limited commodities but as noted by the Commission had limited territory in so far as the proceedings



were involved; and there is where the Commission affirmed or later determined that it would not have any serious adverse effect on the plaintiffs in this proceeding. Now, what I read you -- well, first the question; there are four questions really involved before Your Honor, that Your Honor will have to determine in this proceeding. And those it has been suggested by the United States District Attorney that those are well expressed in the Virginia Petroleum Jobbers Association case; and the citations will be furnished to you. And those four questions are these: The Court says that in those cases that the following criteria or guide lines guided, that is, where there is an application for a temporary restraining order of a final administrative decision, Number one, has the petitioner made a serious showing that it is likely to prevail on the merits of its case; on response to that as this Court well knows on the basis of its long experience that in order to overturn an Order of the Interstate Commerce Commission the burden rest on the plaintiffs ultimately to show that the Order does not contain substantial evidence and other presumptions support the Order of the Interstate Commission.

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Now, there is certainly substantial evidence in this record, involving all, of all the parties and it is one of the longest and most detailed perhaps in the Commission's Motor Carriers history and we respectfully submit that it would be impossible for them to show that on TRO where all they present are affidavits of possible diversion. The second issue that the Virginia Petroleum Jobbers case proposes for the Court is, Number two, has the petitioner shown that without such it would be irreparably injured. Now, in that particular instance it is noted that issue has already been briefed and considered four times. The Commission has said in its expertise on the basis of a careful consideration of that tremendous volume of evidence and the long hearing and the multiple arguments before the Commissioner on that very issue that it has not been shown to the Commission that any serious adverse effect would be had and that in any event that the public as noted by the Commission that the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other may experience. May I digress just long enough to say this, that those are the affirmative findings of fact by the Commission. This Court knows by analogy



that when this District Court sets through a trial and makes a finding of fact that the Circuit Court of Appeals of this Circuit is not going to be behind that finding of fact, unless it is purely arbitrary or capricious; and certainly this same analogy would apply here, I don't believe this Court will go behind the findings of fact by the Interstate Commission, first that there is no serious adverse effect and any effect is farcutweighed by the substantial public hearings through out and established in this record. Now, the third issue that this Court has or the third question is, will the issuance of a stay substantially harm other parties interested in the proceedings, which is - - which averts to the proposition of the potential diversion or loss of traffic. Now, just as a matter of law, in the first place the Commission has affirmatively found, I say to you that the position of the plaintiff in that connection is factually untenable having been found by the Commission that it does not exist; and secondly, that even if it did exist that there was some potential diversion or loss of trade, that it would not judically support a TRO. Now, this Court inquires and properly, what authority do you have

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for our opposition where does exist that it would not support a TRO. As noted by Mr. Cross in his argument the Prosen Food case a c nas been xeroxed and handed to Your Honor is one support in that connection and is a Three-Judge decision but if you will look at the very end of that decision, as noted, you will find a copy of the single Judge order, the District Judge order with respect to the application for TRO where that principal is enunciated and applied. Now, in addition to that I would like to refer very briefly to the Court the case of Railway Express Agency against the United States, and incidentally that Supreme Court decision where the Court stated and I quote:"Further more the application, and this was an application - - -

THE COURT: Now, you are reading from the brief?

MR. OULAHAN: Yes, look at the top of page 13 for the purposes of emphasis, that is the brief of Bowman. "Further more, the application disclose no irreparable injuries to the Railway Express" and I might interpolate to say, Your Honor is familiar with the Railway Express, a carrier, because the Commission order other than a possible loss of trade, that might be incurred if United Parcel were permitted to proceed under its authorization,



and in that case it was a Three Judge Court denying a preliminary injunction and that was the language of the Court in that case. And also in the Aero-Mayflower case, where the Court said, and again I quote: "Plaintiff's application to engoin the Commission from - - issuing a certificate of convenience and necessity in accordance with the challenged order was denied at the adversary proceeding. Since it appeared to us inte-locutorily, that no prospect of irreparable injury to plaintiffs could be shown beyond a possible loss of some trade which might be suffered by plaintiffs if TEK should operate under the certificate before the case could be determined upon the merits" End of quote. So those are the decisions together with the one already suggested to support that proposition. Now, fourthly, and lastly in so far as the criteria are concerned that would gather in this Court in its considerations or issuances is whether the public interest, and that is the prevailing one, very frankly, is Number 4 realize the public interest. It is noted the Commissioner stated that the public interest lies in the approval of three of the ten applications; and that issue also was exhaustively briefed and determined. Inso

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far as Bowman is concerned, Your Honor, I do not propose to discuss or consume the time of the Court this morning with discussing the factual information set out in the affidavit of Mr. Garcia Salyers, President of Bowman, except to state this: If Your Honor, will note in this Order, and Your Honor is familiar with the provision of the Interstate Commerce Act imposing upon the recipent of authority or the holder of authority a burden in addition to the benefits granted it is a two-way street; when a carrier obtains a certificate it has the benefit of providing that service but it also assumes the duty and responsibility. Bowman's affadivit shows that when the Order of Division One, following the Order of Division One granting it authority that Bowman proceeded with dispatch to get ready to provide the service that was contemplated under the grant, and let me just state in a brief summary that the affidavit of Bowman establishes that it had contacted, that it contracted to acquire and did acquire, already acquired additional equipment to dedicate to this service; that in addition to that it did not proceed without judicious and economic thought. That in its plans it obtained options on the then market to



obtain equipment. And the affidavit shows that under the options themselves that a favorable price was obtained by virtue of the option if Bowman is in position to exercise to provide the service that would result in savings of over $40,000.00 there in exercising the option alone and that Bowman has obligated itself - - that Bowman has obligated itself and invested over one and a half million dollars in equipment, and if you take the prime rate of interest alone at 6% that represents $90,000.00 per year in interest charges alone. The affidavit also sets out the cost of the new units, ten acquired, the $1,600,000.00: that it has invested one and a half million in other vehicular operations, some of which was needed in connection with this present service: and that option subject to cancellation by Bowman, if the certificate is not issued, would expire in a period of 90 days from October 1st, 1972. The other ways in which there is damage to Bowman, in economic loss to Bowman are set out in the affidavit. In closing let me say it is not of final importance and controlling importance what the damage to Bowman is going to be or what the potential loss of trade or damage to the plaintiffs might be. The

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real damage lies in the public interest following a hearing that has consumed an extended period of time and also the administrative lag and I say advisedly, that judge the shipping public and the people who buy their goods at the various places and the 933 Public witnesses that are charged with maintaining an inventory and where this record shows where that inventory is not properly supplied they have to put more money into inventory at inflated prices and where small receivers of goods all over this whole territory that is involved in this proceeding testified at the greatest out-pouring of public witnesses in any motor carrier case in the history of the Commission came forward in this case; and they testified not by tens but by hundreds - that we are not receiving the service that we need, we are having to invest more and more money in inventory because our goods are not getting here on time; and that in certain instances if something is not done we are going to have to go out of business. Now, that is not the motor carrier, that is the people who testified in this proceeding, and the Commission after reviewing that said "we are going to do something about it, the time has come to do something about it; we are going to grant three



of the ten applications": and it is on the basis of that record and that interest to correct an obvious defficiency in existance that we definitely urge that this Court deny the TRO and then set the case down for hearing, finally on the merits.

MR. PRESTRIDGE: Your Honor, I will be very brief; I think all of it has been covered. I am representing Red Ball Motor Freight in opposition to the granting of the temporary Restraining Order. Along in furtherance of what Mr. Bishop has said in regard to the public interest and in light of the Court's mandates in the Virginia Petroleum Jobber's Case as to what the Court's control is and what the Court must consider in granting the TRO I prepared an affidavit on behalf of or with the cooperation of the Vice-President of Red Ball and I filed it with the Court. In the affidavit I have attempted to show and have shown, I believe, the steps and the expenditures to which Red Ball has gone since the Division Order granting the authority sought, that is money that has been spent in good faith in furtherance of its desire and willingness to operate and provide service for which Interstate Commerce Commission found that was needed. In addition, Your Honor, and I cannot emphasize this

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enough as to the public interest where in lies the public interest as was dictated in the Virginia Petroleum Case, and I will also point out, Your Honor, there is some 8th Circuit opinions in Middlewest Motor Bureau vs. United States, at 433 Federal 2nd, 212, on which an application for certiorar was denied by the Supreme Court; at 402 U. S., 499, the 8th Circuit in that case quoted verbatium from the Virginia Petroleum Case as to what the Court's role is in considering a TRO and at the conclusion of that quotation the 8th Circuit said, "from these considerations" and I am quoting now: "from these considerations it is evidence that the Federal Courts must be exceedingly careful in granting extra-ordinary relief of a stay of an Agency Order." Now, in the affidavit of Red Ball we have shown, Your Honor, where we believe the public interest will be served by denial of the Temporary Restraining Order which would authorize the Institution of a single line Motor Carrier Service by Red Ball between Atlanta, Birmingham and Greenville, on the one hand, and a multitude of cities, towns and villages in the states of Texas, Louisana and Arkansas which are not served by any other motor carrier in a single line service between



those points. None of these plaintiffs, nobody else, Your Honor Red Ball would be the only single line motor carrier between Atlanta, Birmingham and Greenville on the one hand and on the other the points that are set out in appendices B, C, and D to the affidavit of Mr. McCarthy. I think, Your Honor in considering the TRO and under the mandates of the Virginia Petroleum and Middle West Bureau cases this Court must consider the public interest. Certainly it will be tried on the merits fully but at least at the TRO stage some consideration must be given to the effect the TRO will have on the other parties, Red Ball and the public. I want to make one other observation; Mr. Smith has alluded to the fact that the Interstate Commission reversed the report and order recommended by the examiners in that case; of course that will be more fully briefed and argued on the merits, Your Honor, I am sure, but I would call your attention that the Commission as an Agency in making its' decisions is not bound by the findings or the conclusions of the examiners. Thank you, sir.

THE COURT: Mr. Prestridge, did you leave a copy of the affidavit with me or - -

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MR. PRESTRIDGE: No, sir, filed it with the clerk, Mrs. Lindquist, I believe.

MR. CULAHAN: May I have five minutes to reflect with my colleagues here?

THE COURT: Yes, sir.

MR. CULAHAN: The plaintiffs and defendants are well represented today by local and national counsel, but the one thing that seems to have been missing and in particular from our fried Don Smith, are what about the public? The ICC represents the public in granting the certificate. We are here before you today, Your Honor, to protect that public interest and I just have a few words to say on that subject; taking two things out of the Virginia Petroleum Jobbers case; the first is, the reasonable likelihood of success. Forget about the TRO but lets' take a look at the long ahead. Are the plaintiffs going to prevail in this case because if there is no reasonable likelihood they are not going to fail they are not entitled to a TRO; and on that point Your Honor as we set forth in our brief which is attached to our petition to intervene which is exhibit B, at pages 42 and 49, you will find that the law is very clear and is laid down by the Supreme Court that economic



injury is no grounds for relief in a trucking case; that there is no vested right in the preservation of your competitive position when you have a certificate from the Commission and where the records shows an inadequate service, based on the evidence of public witnesses, the Supreme Court will reverse a grant of a certificate by ICC where the ICC did not pay any attention to it. Now, in the case below on this subject, Your Honor, the hearing examiners said the plaintiffs should be able to remedy the deficiencies a service which exists in this large service area. The Supreme Court in U. S. V. Dixie said that is not the law and that is what the Commission said in its' findings here. Now where lies the public interest, and my friend Don Smith has said "we are serving the public, there is going to be no irreparable harm to the public, keep things as they are." What is the status quo? Now, Your Honor, as you will have seen from the Commission's findings which are not refuted at the present moment, I went through various affidavits filed this morning, while I may have missed a couple of things in there I did not see any thing in there about refuting the evidence before the Commission about inadequate

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service. The Commission at pages 596 through 600 of its' report very clearly shows inconsistent and excessive transient time, service restrictions, refusable to pick up traffic, embargos, interline difficulties at places like New Orleans because of the fact that Johnson, for example, cannot single line traffic from the northeast and southeast to the southwest area; and the result of the shippers is we are losing customers and business; we are penalized under a contract penalty clause; we cannot maintain the necessary inventories; our production schedules are disrupted; we cannot expand and in some cases we are even turning private warehouses -- indeed I know a lawyer cannot testify but I rode into town last night with a customer of a trucker which shall remain nameless and he told me that the trucker would not pick up interline traffic here and how he had to revert to using either private carriers or getting trailers tacked onto somebody business. That is precisely the kind of thing that we are talking about. And under those circumstances, Your Honor, the public interest has not been served and we believe that you should not grant a TRO. Now, my friend mentioned that in National Transportation policy - - as Your Honor knows that is set forth in



a footnote prior to 49 U.S.C., Section One. I would like to point out that that transportation policy requires that the Commission in administrating truck traffic promote efficient service and further all of the policy is to assure adequate transportation to meet the needs of the community; and the Supreme Court in the Schaffer Case, Your Honor, 355, U. S., 83-95, implemented that and pointed out that the implementation of that policy required the Commission to evalute the needs of shippers. The Commission did not do it in that case, they did it in this case; and in making their evaluation and as a fundemental basis for their decision and a grant to these three certificate holders, particularly Johnson, they found that service was grossly inadequate. Under those circumstances, Your Honor, we believe as the shippers that a TRO should not be granted and then eventually when you hear the case on its merits we think you are going to sustain the Commission.

THE COURT: Thank you.

MR. SMITH: I would like to make a few brief rebuttal remarks and I think there are some other attorneys here that would like to also respond to some of the statements if the Court will allow it.

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THE COURT: All right, go ahead, glad to hear anything you have to say.

BY MR. DON SMITH:

Now, I think at the outset in response to some of these arguments, the eloquent speeches have been made and they have overlooked the facts that if we agreed with the Commission's decisions in its' findings this lawsuit would never have been instituted; and it is for that reason that we are anxious to have the grant of the TRO. As we have stated in our complaint we believe that the merits of the case will be decided in our favor. And we feel that the findings of the Commission in Division I were erroneously made based upon a mis-application of law; the setting of double standards, and, interesting enough, nowhere in the arguments this morning have you heard anyone make reference to the various serious constitutional questions which we have gone over in our complaint. So this is not a question of asking this Court to compare its expertise to the alleged expertise of the Division I under questionable circumstances. It is the asking of this Court to give us the opportunity to show where the Commission committed error in the evaluation of that testimony and also invaded the constitutional rights of these various plaintiffs in



making its decision. Now, we have heard from several of the interveners counsel that this manner was thoroughly considered by the Commission and the time table has been given; I think that is significant for two reasons; first of all, I think we must realize that the fair consideration that allegedly was given may have been given by Division I, but after pointing out to the Commission the allegations which we have made in our complaint, this voluminous record the voluminous report, all of those briefs were summarily denied within a matter of twelve days after their last submission. That is not thorough consideration. Now, they talk about the institution of this which they propose Your Honor, I have had the pleasure with working with everyone of the counsel for these interveners in many different cases and they are intelligent men and able motor-carrier lawyers, and they know as do their clients that there is nothing final until the certificate of that Commission has been issued and the fact that they may have made studies and they may have gone out and taken options is one of the best reasons why I think this Court ought to grant the Temporary Restraining Order. They in fact are arguing to you - "look what we have already

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done, therefore, don't grant that Temporary Restraining Order," but if you don't grant it today and we hear it on the final merits of the case at some time later then they are going to come back and say "Look at all the things that we have done and what you will destroy - If you reverse the decision of the Commission"; in other words they are trying now to argue certain merits of this case that has no place in the Temporary Restraining Order hearing and it should not be considered by this Court. Through my newly acquired friendship this morning I have certain quotations from me and then arguments made by the 41 shippers, and he tells us that these shippers are having to do such and such. They have had to do such and such for seven years; there is no urgency about permitting these people to start an operation that could be reversed. I would point out to the Court in response to certain arguments that have been made along the four basic criteria that were enumerated by Mr. Johnson on behalf of the Commission I would call the Court's attention to G. B. Searing vs. United States, District Court Case from Eastern Tennessee, 1969, and that Court says, "This Court believes that the more proper rule is that it is



not necessary to justify the issuance of a Temporary Restraining Order, that the plaintiff's right to a final decision after a trial be absolutely certain and wholly without doubt. That if the balance of hardship tips decidedly towards the plaintiff it is ordinarily sufficient that the plaintiff has raised questions going to the merits which are so serious, substantial, difficult and doubtful as to make them fair ground for litigation and thus ask for a more deliberate investigation;" and the Court in that same Case took judicial notice that a carrier serving a particular market is apt to undergo a more rigorous hardship if confronted with a new competition than our carriers which are granted new authority in the same market. Now, we are talking about irreparable damage; the argument has been made - "look at these giant motor carriers," and I refer to this area, if the Court please, where do these carriers recover their loss of revenue in the damages that they sustain during the time when this action is pending if they are allowed to institute the proceedings and then this Court should make the determination that the Commission was wrong.

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We submit to the Court that the irreparable damage argument is valid. The diversion, by the very words of these representatives would take it away from the plaintiffs and other carriers and as a result would be injurious not only to the carriers and to the public but not preserve the status quo in furthance of the National Transportation policy. Mr. Phineas Stevens would like to address the Court.

THE COURT: All right, Mr. Stevens.

BY MR. STEVENS:

May it please the Court I represented before the Commission certain of the plaintiffs in this proceeding, Gordon Transport, Camel 66, Red Lines, Transfer & Storage, and several others.

And I would like to submit to Your Honor that if the argument of the distinguished counsel for the intervening defendants is correct that in effect it will mean that our Statutes for review are completely ineffective, that there would be no purpose in such Statutes. If the Court must assume that the Commission in all instances made no error of law why provide for a review. If the Court cannot preserve the status quo so as to give a Three Judge Court an opportunity to review the Commission findings without being confronted with



a situation that has changed since the Commission made its decision that would put the Court in a position where they in effect would be taking money away from the defendants, it would be closing down the terminals, it would be letting off employees, that is the position with deference, Your Honor, that the defendants would have you by denying this temporary Restraining Order place the Three Judge Court in when we come back, as Mr. Smith says, they want to come back with the situation where the Three Judge Court would be compelled to close terminals, close down service and all in order to find that the Commission did make errors of law as we contend. We ask only that the status quo be preserved in order that the Three Judge Court can make these determinations.

Mr. Cross on behalf of Johnson pointed out that all the plaintiffs do not oppose all of the three applicants that were successful. That is, of course, correct. But I do not see that it really makes any significant difference because at least some of the plaintiffs oppose all of the defendants; for example Gordon Transport that I represent opposes all of them. He states that all will not suffer or do not claim that they will suffer irreparable

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damage by the grant, for example, of the Johnson Application. It is true, but I think that if only one could be found by this Court that it would suffer irreparable damage that is sufficient; the fact that others may or may not is with difference in materials. We have for example an affidavit by Gordon Transport opposing all of the applications that it would result in irreparable damage. That irreparable damage, Your Honor, is not simply the loss of revenue and a loss of profit that might go to its stock holders. As described in the affidavit filed on behalf of Gordon it would result in a chaotic situation, a disruption of traffic patterns that would distort the existing operations to such an extent that chaos would result. Everyone in this proceeding has recognised from the beginning that the grant of these applications would result in massive re-alignments of traffic. The defendants have established that in their affidavits; that is rather a fantastic figure that Johnson has come in with and its projections that within six months time almost a million dollars would be diverted from existing carriers and transferred to Johnson. Now, we say only that such massive disruptions should not be permitted to



take effect until the Court has an opportunity to determine whether that is in effect justified. The Johnson affidavit is carefully drafted where it does not state that this diversion would come from these particular plaintiffs. Well, whether it does or does not we submit is not really material here. If so I cite then the Red Ball affidavit. It says percisely that they are now interlined with traffic plaintiffs and if they are permitted to engage in single line instead of joint line operations they will stop interlining their traffic with these plaintiffs and start handling it all themselves. Now, I would like to mention one factor here that I think must be emphasized, Your Honor. As Mr. Smith says this is not simply a battle of major motor carriers; there are many motor carriers involved, many large but some small. First, I will talk about the big ones because that is what the defendants would have us consider. They point to the fact that Gordon Transport is a healthy carrier; it is a healthy carrier, it is a large carrier; but I would like to point out that the examiners made certain findings of fact; these findings of fact were not challenged and they are the only findings that the Division adopted.

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Adopted them verbatim because they were not challenged; those findings of fact as to this large carrier include the findings that the majority of all of its traffic would be subject to diversion. Now, it is true that it is large but that makes the disruption even more significant. What will happen to the public served by Gordon if over 50% of the traffic that it is now transporting throughout multiple states is subject to diversion? The results are real frightening - - will it be just specific terminals? The examiners found the applicants did not challenge - - the Division found that as to certain terminals, such as Birmingham, 98% of its' traffic would be subject to diversion. Should this Court permit a terminal to be subject to 98% of diversion simply because it is a large carrier. I submit that the fact that it is a large carrier makes it more important that Birmingham have the service of that large carrier. That is a finding in the Division reports. Also in the Division report as to this large carrier the Division stated specifically diversion of their freight to other carriers - -

THE COURT: What case?



MR. STEVENS: I am reading from page 768 of the Division Report. The findings are fact as to the plaintiff Gordon Transport. Diversion of their freight to other carriers would seriously effect Gordon ability to render adequate and satisfactory service. And will result in increasing its' operation of 50 miles between certain of its' terminals. In 1966 Gordon operated empty vehicles a total of over a million miles much of this between points involved in these applications. Now, that is a fact, the Division finds it as a - - -

THE COURT: I did not find that here. Now, where were you reading from?

MR. STEVENS: 768 of the Division Report. It is in Appendix G; Your findings of fact relative to the protesting Carriers.

THE COURT: Here it is. I have it.

MR. STEVENS CONTINUES:

I read the last two sentences of the findings relating to Gordon right up here in that particular finding. Now, another important thing that I want to emphasize, Your Honor, is this; no one is contending that these grants will supply service to any community that is now without service; or stated in another way that the granting of this

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Temporary Restraining Order will deprive any community of service; the issue is simply "will that be provided in two line service or one line service," is mainly what the issue is. But that is not the only issue. We have heard arguments that the public interest must be preserved and is dominant. We of course agree that it is the public interest that is controlling but I cite you to another finding that appears on page 777 of the Report; as to the plaintiff, Campbell 66 Express. Now, there they also found that Campbell would be subject to massive diversions of traffic. Now, what would this massive diversions do to this carrier The Division found as a matter of fact that diversion of freight from its' terminal points will result in a deterioration of service at many of the smaller points served by Campbell, particularly in Mississippi which are not proposed to be served directly by these applicants. In other words the Division has found on page 777 that if these applications are granted there will be a deterioration of service to points they do not propose to serve. Now, it is true that when they got over into the body of their report they forgot about this finding, they gave no effect to this finding, they did not





discuss this finding but that is simply one of the errors of law that we will cite to the Court when we get to an argument on the merits. I cited here merely to show that this is not a one way street, that more service means better service or enhances the public interest. The Division itself has recognized that this diversion as to small points they do not propose to serve will result in a deterioration of service . The examiners found that the grant of any of these applications in its' overall aspect would result in a deterioration rather than improvement of service; so it is not just clear that grants of authority equals improved service. That is one of the issues of course, and we say that when the Division found that as a fact then did not give effect to it it was an error of law. But as to other - - - we have talked about the large carriers, now what about these small carriers. Mr. Bishop argues that these matters have been repeatedly argued and rejected by the Commission. Now, that is correct. They have been repeatedly argued by the Commission but we say that one of the errors is that they made no findings on this in their Report, they gave no consideration to it and it was an error of law

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because they did not do so. For example, Red Line Transfer & Storage of Pine Bluff; what did the examiners find as to Red Line? They found that the grant of one of these applications would put them out of business. Now, the Division ignored that. We argued it, yes, but they did not deal with that finding at all. And they have cited that these large carriers operating with big profit margins, good operating revenues but they don't say anything about Red Line whose profit margin is paper thin or non-existent, an operating ratio of 99. and a fraction. It has no margin to withstand additional competition and that is shown in this. In those instances we submit only that the Court should not enter an Order which will resolve in all of these changes so that when the Three Judges Court sits on it the Court cannot properly review this as the Commissioner reviewed it but is going to have an entirely different case to look at. Now, they rely upon a Division, I mean a District Judge's refusal in Texas to not issue a Temporary Restraining Order in the Frozen Food case. We are not submitting to Your Honor that the issuance of a Temporary Restraining Order is something we are entitled to as a matter of right. Obviously we



recognize that we bear the burden of showing to Your Honor that we will incur irreparable damage. We submit that we have. In that case the District Judge said simply that the plaintiff had failed to establish that, that they show simply they are going to lose some revenue which he did not think constituted in that case irreparable damage. Our affidavits go much beyond that. We show many changes other than simple diversion of revenue. The pleadings in this case even show some of the applicants used the phrase that if other applicants are granted that it will strike a lethel blow or death blow to their operations; and that is much stronger, we submit as a factual matter than what was before the District Court in the Frozen Food case. Now, we submit Your Honor, that where the plaintiffs in this case will suffer as they have shown this massive disruption, where the defendants have shown only that they have made plans, they have acted on this, we say that the balance there should be to leave matters as they stand. Of course these defendants have bought equipment; they buy equipment every year, they have to buy equipment every year. But I say this, with that, Your Honor, if they bought equipment and made investments on the

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basis of this order that they should not be heard to say that that should tie the hands of this Court. There has not been a single 24 hour period that has existed in which they have been in possession of a certificate that will justify that. Or an order authorizing the issuance of a certificate. When this case was filed in this Court the matter was still pending before the Commission on petitions which could have resulted in a review of the entire proceedings. As soon as the petitions for reconsideration were overruled as Mr. Smith has pointed out, instead of just letting them be in the dark as to whether a suit would be filed or not, we promptly notified the Commission that a suit would be filed and we sent them a copy of the letter and so then the Commission promptly came back and gave us this period of October 6 to file ourcase and request a temporary Restraining Order. We filed before that dead line. So theyhave known all of this, and I submit, Your Honor, that they should not now be heard in this Court that the Court should not preserve the status quo because they have gone out and acted on the reliance of the Commission, Thank you, Sir.



THE COURT: Anyone else want to be heard? Personally I think the case has been pretty well covered. And about all I can say to you is that I have not had, as I have told you, have not read all the affidavits and I have not read all the briefs but I do not have anything else to do but to do this for the next two or three days and I believe you will be justified in expecting some action out of the Court pretty soon. I am going to first dispose of the Question of The Intervention of the Shippers, which I hope to be able to do tomorrow and I don't know whether I will get My Order to you on the Motion for Temporary Re-straining Order tomorrow or whether it will be Monday or Tuesday but I will get it to you just as soon as I can. I think the Court ought to give some consideration to the various contentions made and I don't think that our Honor has been able to do it, maybe there are lots of Judges that might and all that but they can do things I cannot even get in sight of but I never did like for a Judge just to arbitrarily when I was practicing law rule against me and act as though I did not know anything at all and probably I didn't but I think a Judge ought to give some consideration to these problems and that is what I

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am going to try to do. I feel like another two or three days in view of the time that has lapsed will not be too detrimental to any of you men or to any of your clients; I think you will all pretty well survive in some way or other. Maybe I don't know how you will do it but that is your problem, but at least I am not going to add to your burdens any more than I have to. Now, here is one thing I would like for you men to talk about; regardless of what the Court might do about the Temporary Restraining Order we have got to dispose of this case; Judge McHaffy is a member of the Court of Appeals of this Circuit and Judge Williams, in fact this is his court room, I don't have a court room, I just borrow this one occasionally; we have got to figure out a way as soon as we can to try this and I have not talked to the other Judges; but I have given some thought to the matter and it would seem to me with all the voluminous records that is in existance we might consider all of that as being in evidence in this case for the use or such portions of it as may desire and then this is a case that will have to be decided, that is, briefs will have to be submitted and studied by the Court and then oral argument will be illuminating to the



Court. Of all the cases that I have come in contact with I think oral argument is imperative in this case following the filing of briefs; I just don't see how the Court could proceed in any systematic way, any other way. I would like for you to give some consideration in your own discussions about the filing or the submission - - service and submission of briefs in sequence; I wish you would give some thought to that and advise me of any conclusions reached; if you can make that conclusion yourself it will just save us making it because the Court is going to make it if you men don't. Make it and you know more about your own work now. The only thing I am going to say I just don't want anybody dragging their feet another six or seven years - - I want to get rid of this thing one way or the other but we would prefer very much for you to work out your own schedule; then I can probably assure you we the Court will act from this and expedite it and there will be no dragging of the feet by the Court. I know that both of my associates are not inclined to do that. And I think, I stay confused enough, confused enough and if I can keep business moving it relieves my mind of some problems that maybe I did not understand.

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I don't like to allow too much to accumulate at one time, so if that is about all we can do Court will be in recess, but let me ask you this question, have any of you thought about the problem that I mentioned about your briefs. Have you had any discussions that might lead to some agreement to proceed on?

MR. CROSS: I have discussed it with counsel for the Interstate Commerce Commission who is not present here today but he will have to write the brief for the Commission on the merits or arguments in support of authority. He told me last night that if the opportunity arose today as it has now, to tell the Commission, the Commission wants 60 days in which to prepare its' brief. Now, under that type of scheduling and as is customary in these Three Judge Courts I would think that the plaintiffs would want to fix a date on which the plaintiffs file, 60 days thereafter the Interstate Commerce Commission and the intervening defendants would file; and perhaps 20 days thereafter the plaintiffs file a reply brief, then the Court would fix the day of argument. Now, I would like to explore, like to see the plaintiff move ahead with the filing of their brief as prompt as possible.



THE COURT: I would too.

MR. CROSS: I have not explored it with the plaintiffs.

THE COURT: I have not either; I was just suggesting that you might talk about that a little bit here today, discuss that matter and then advise me so that I can talk to the others and you will hear from me on both of these projects just as soon as I can. I want to express my appreciate to the courtesy of all of you and the thoroughness of your argument, they have been helpful. It has cleared up some things in my opinion. It will be very helpful to me and all I can tell you I will dispose of them as quickly as I can and the Court will be in recess.

MARSHAL: Court is now in recess.

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CERTIFICATE

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the proceedings had in the above entitled and numbered cause at Fort Smith, Arkansas, on the 1st day of November, 1972; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said proceedings as shown by my notes.

Reporter

Dated this 15th day of November, 1972.



**APPENDIX E**

Transcript of hearing before Three-Judge District Court on July 24, 1973.

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC. ET AL | : | |
| VERUS | : | NO. [illegible] |
| INTERSTATE COMMERCE COMMISSION | : | |

BEFORE A THREE-JUDGE COURT

HONORABLE PAT MEHAFFY
Eighth Circuit Court of Appeals
HONORABLE JOHN E. MILLER
Senior District Judge
HONORABLE PAUL X WILLIAMS
District Judge

Port Smith, Arkansas.
July 24, 1973.
9:30 o'clock, a.m.

APPEARANCES:

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## C A P T I O N

BE IT REMEMBERED, that the above entitled and numbered cause came on for Hearing before Honorable Pat Mehaffy, United States Court ofAppeals, Eighth Circuit; Honorable John E. Miller, United States Senior District Judge; and Honorable Paul X Williams, District Judge, at 9:30 o'clock, a.m., on July 24, 1973, at Fort Smith, Arkansas: that the Appearances as stated appeared representing their respective clients: that during said Hearing the following proceedings were had in connection therewith, towit:

(Reporter's Note:- Where it is shown that John H.D. Wigger, Jr., is addressing the Court it should be Seymour Glanzer, Esq., addressing the Court as Mr. Wigger was not present at said Hearing.)





## P R O C E E D I N G S

9:30 a.m.

MARSHAL: Everyone will rise (At this time Court is duly opened by the prayer of the Marshal.) Court is now in session, you may be seated.

JUDGE MEHAFFY: Gentlemen, without any further preliminaries I am sure each is well acquainted with this case, PS-72-C-65, than I am because for all I know the pleadings are still continuing to be filed. My individual notion about this case is subject, of course, I have jurisdiction to speak for the Court, is that the way the case has developed and is developing that certainly you are entitled to a Three Judge case, the status that this one is in. I am going to read the Motions, et cetera, before us today. You are entitled to a speedy trial. We are willing to give it to you, but we are not going to clutter up this thing, letting everybody, letting four or five different attorneys argue for the same clients or anything of that sort. And after getting this thing started I am going to ask you all to designate the one who will speak for your interest. The only thing that I know for sure that we are going to do is we are going to take all this business under

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submission and each protect everybody's rights, as best we know how to do it; and for the big session a couple of weeks from now that I have heard so much about, that is supposed to be the final, in which I understand some fifteen lawyers are hoping to be here to argue it orally. I will tell you right now, there is no such thing is going to occur. We will give everybody a fair trial but we are not going to sit here two weeks from now and listen to every four or five different lawyers representing every interest in this thing keep us for several days and listen to oral arguments. As I say this is about my notion. I have a little bit of experience with what we call Commerce Laws, know a little bit about this and I want to say just a preliminary statement to tell you that I am going to read to you these things that are supposed to come up today and still are continuing to come up, and call on Judge Miller to express hisself and we have to kinda individually. I would hope that we would get together before the day is over and tell me some tentative conclusion and we may take this whole bag of worms under submission, but that remains to be seen. I assume that everybody wants a speedy trial because the pleadings continue





to be filed, but here they are that I have listed, the things that need our attention this morning. There is a Motion by Intervening Defendant, Johnson Motor Lines for a temporary restraining order to hear and determine plaintiffs' application for preliminary injunction; and to hear and examine Motion for Supplemental Complaint. Next, Redball Freight has filed as an Intervening Defendant a Motion almost identical to the Johnson Motor above. Following that the plaintiffs have filed a Motion to file Supplemental Complaints. No, that is a Motion to file something else here. The Supplemental Complaint asks that the certificate granted to Jones Truck Lines be temporarily and permanently enjoined. Then there is an Intervening Defendant, Johnson Motor Lines, has filed a Motion in opposition to the plaintiff's Motion to file a Supplemental Complaint. Their Motion states that Jones Truck Line, 28-U.S.C.A.-1398, did not establish to Arkansas Best and Mercury Motors in opposition to Jones application. Next, a group of shippers, has filed a Motion to intervene as defendants. They seem to appear collectively as Daisy Manufacturing Company. Daisy Manufacturing Company has filed an answer to the Supplemental Complaint.

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The Daisy group has filed a Motion to drop all the plaintiffs except Jones as not real parties of interest. The Daisy Manufacturing Group has filed a Motion to dismiss under 28-U.S.C.-1398, alleging that no party is standing as the party of interest to bring any action against the ICC. The principal of business as in Arkansas. Now, with that statement, I am going to ask Judge Miller, who is more familiar with this than I am or could possibly be because of the recent filings, and I would only add to see if there is some way you gentlemen can't separate it in groups and one of you, if you have any argument, that one of you speak for a group and not have any fifteen arguments or lawyers more or less arguing the same thing. As I said, I am not going to, don't have the power to dominate this Court, I am speaking now as an individual but I have listed what I think are the primary or paramount things and hope you all can be reasonable about these things because I think and we will be reasonable and maybe we can get together; I would not want to say this before everybody but we will make an effort to dispose of this thing in an orderly manner and in such a fashion that will give every body fair treatment; and with that





statement I will ask Judge Miller to comment on his view [illegible] matters that will be taken up.

JUDGE MILLER: I hope the Court, members of the Court can get together on our procedure but I think the one paramount question before this Court for determination today, the first question that should be considered is should the Motion filed, Supplemental Complaint, be granted. If that Motion is not granted then the subsidiary Motions, which are made a part of the response of Jones and certain other persons, would automatically pass out of the case and leaves only for consideration at this time the Motion of Johnson as well as the other two to dissolve a Temporary Restraining Order that was issued, I believe, September 7, 1972. That would come; then the next Motion, which would probably be a more or less a Subsidiary Motion would be the Motion for a temporary or a preliminary Injunction, but I don't see any way to approach this matter without first determining whether or not the Supplemental Complaint should be permitted to be filed. If that is filed then we open a pandora box or some other kind of a box that will be, will raise a great many questions and I am not adverse to answering any questions that arise in the course of a lawsuit

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but I think that it is just as important to go about determination of litigation in an orderly fashion. Now, here is what we have got in this matter; this Motion for Supplemental Complaint was filed on June 29, 1973; the record before the Court shows on December 30, 1971, originally denied, the Commission originally denied the application of Jones along with the application of other plaintiffs and cerdited only the application of Bowman, Redball and Johnson. That was in December of '71. On September 1st, the Commission re-opened the application of Jones and on December 6th set aside a portion of its' Order of December 10th in which the applications of Redball, Bowman & Johnson were granted. Then also it entered its' Order on December 6th but on May 29, 1973, the Commission apparently upon its' own Motion did correct, entered a Corrective Order on correcting the Order of December 6th; then along came this Motion. As the matter then stood when this suit was filedyyou had three, we had the Order of Interstate Commerce Commission granting these three applications and denying all other applications; although there was apparently a dissent of one of the Commissioners at that time. Well, the matter





stood that way until the Commission set aside and granted the Jones application. That participated the filing of the Motion for supplemental, to file a Supplement Complaint. That Motion raises in my mind some very serious questions. They have been briefed. I don't know anything else that could be said that has not been said in the briefs of the parties; and any oral argument on that Motion would, I think, just be plain repetition; but I do not construe that to mean that if you have anything to say additionally to what has already been said in the matter, why don't feel any hesitanc; in expressing yourself; but that seems to me to be the only orderly fashion that we can approach this case. Then after assuming that the Motion for, to file a Supplemental Complaint is denied, as I said, then we have only two questions left in the case as I see it; one is whether or not TRO should be lifted and then if it is lifted then whether or not a Preliminary Injunction should be granted in accordance with the prayer of Johnson and the other two men; so, if the Motion is granted, then we have got to make some arrangements about how we will proceed then; whether or not we will hold up the granting of the two or hold up the

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consideration of Red Ball and Bowman and then let Johnson Motor fight it out with Jones. Again all of this is in the briefs. I cannot imagine anybody more explicit than you gentlemen have been in the presentation of the issues and the thing that is bothering me about the whole - - about that first Motion is the delay and what will be accomplished and whether justice will be served by re-opening the case to that extent. Now, there is the proposition, I have my own ideas about it and I am sure Judge Mehaffy and Judge Williams have theirs, but that is what I would like to have argued first; and then let us determine whether to permit it to be filed, then if we determine that then we will have to go into some other questions; if we determine it is not then there is two questions left for decision today, and that is with reference to TRO and Preliminary Injunction request. I know what is back of the Preliminary Injunction, of course, subjecting to the Order that was written on the TRO, but that is all right; but I imagine this, if the Motion is overruled, the Motion to file Supplemental Complaint is overruled, and those other two what I call Subsidiary Motions are disposed of, and I think people should be pretty cooperative in that respect,





been operating about eight or nine months under that or haven't been operating because of that TRO for eight months. Well, I don't know how long it will take us to decide the case on its' merits. If the Supplemental Complaint is out there, is out and neither do I know how long it will take us to work out a decision with the Supplemental Complaint in there and the things that addresses itself to me, to say the least, is whether or not this Court in exercise of a sound judicial discretion should under that Rule 15-B, whether or not we should grant it; that is what I would like to do Judge Mehaffy is to hear from them on that Motion first. Now, I know counsel, eminent counsel is here, I have had you before me before on a TRO; I have some little advantage, I would have more advantage if I had a more retentive memory than my associates have here because you gentlemen argued that pretty thoroughly on that TRO; if you overlooked anything I could not detect it when I started to write my opinion in trying to answer you gentlemen that was opposed to the granting of the TRO, but that is theway I think it ought to be done, Judge Mehaffy, is to take up this and with reference to duplication of arguments, the arguments

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on the Motions to file a Supplemental Complaint, can't be too much under the Rule and under the decisions and certainly under the writers themselves, so as far as I am concerned that is what I would like to do; it is up to these gentlemen here but if I am going to conduct it that is the way I am going to conduct it but that is all I can say at this time. What do you all want to do?

JUDGE MEHAFFY: Do you have anything Judge Williams?

JUDGE WILLIAMS: I was hoping to hear from the applicants for the Motion, the Interstate Commerce Commission briefly respond to it, give us a chance to retire and talk about what they said.

JUDGE MILLER: That is what I had in mind, that is the only thing I was trying to caution them about was, well, I want them to say what they want to say.

JUDGE WILLIAMS: Can you agree which one will tell about the Motion by Red Ball or by Johnson and others rather than have five or six, someone to be the spokesman. Mr. Cross, they keep pointing to you.

MR. CROSS: I think I have been appointed, Your Honor.

JUDGE MILLER: You think you have been elected,





Mr. Cross?

MR. CROSS: Yes, sir.

JUDGE MILLER: Let's proceed then.

MR. CROSS: Let me see if I can put this in the proper context. I think the plaintiffs are moving to supplement the Complaint as the moving parties. It would seem appropriate to me that one of plaintiff's counsel make its' argument in support of their application to supplement the Conplaint that the Interstate Commerce Commission will know who - - who no one here can represent to represent the public and let it be heard in response in that Jones, Your Honor, is the carrier or the shippers but the shippers be heard in opposition to the Motion, and then perhaps one of the three intervening defendants, Red Ball, Bowman and Johnson could then elect one of our members to argue on the Motion.

JUDGE MILLER: That would be very good.

MR. SMITH: I have no reluctance to go forward and I will make the presentation on behalf of the Movants, the plaintiffs.

JUDGE MILLER: I would be surprised if you did have any reluctance.

MR. GLANZER: May I be permitted to appear before the

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Court in this case? Before we go any further I think it would be very helpful, especially since I was not here at the time of the argument, on the tine of temporary Restraining Order, if the Court would please ask the plaintiff to identify which clients they represent in this proceeding and also if we possibly could find out which of the intervening defendants those plaintiffs appear against in the proceedings. I am afraid we just don't know, at least I do not know, and I am having a great deal of difficulty in following the course of this case at this time.

MR. SMITH: Your Honor, I may be able to clear up any confusion Mr. Glanzer has. My name is Don A. Smith of the firm of the Harper, Young & Smith, Port Smith, Arkansas, and I appear on behalf of all plaintiffs in this action.

JUDGE MILLER: All right, you may proceed.

MR. SMITH: Yes, sir --

JUDGE MILLER: Are you going to confine your talk to the Motions?

MR. SMITH: Yes, sir. Your Honor, the plaintiffs have filed a Motion to supplement the Complaint which was earlier filed in this Court on October 4, 1972. We have submitted to the Court a memorandum





in support of our position to file a Supplemental Complaint that occurs to me, and I will be happy to respond on any arguments that the Court would like to hear me on that this issue boils down to two questions raised by the intervening defendants; One, does this Court have venue for the purpose of entertaining the Supplemental Complaint, and secondly, if allowed to be considered will the Supplemental Complaint create delay in the proceedings that were originally filed on October 4, 1972. I would like to first address myself to the question of venue; as a preliminary statement, I would call the Court's attention that the only defendant in this case, the United States Government and/or the Interstate Commerce Commission has not thusfar challenged the venue in this proceeding. We have only a letter dated July 13, 1973, to make reference to the Government's position, and in that letter signed by Mr. Fritz R. Conn, General Counsel, the Interstate Commerce Commission has made the statemen of course and exhibably related to the issue and whether such relief should be granted by the Three Judge Court is the question as to whether the scope of the litigation should be enlarged as prayed by the Supplemental Complaint, and hence appropriate

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for determination by the Three Judge Court; that is the only objection, if you can call that by the Government, so the Government does not raise the question of venue. The question of venue has been raised by what we have referred to as the intervening defendants, Johnson Motor Lines, filed a Motion in opposition last Saturday, I believe it was; Red Ball has not filed anything and Bowman tendered to us.

JUDGE MILLER: Red Ball filed a Complaint, didn't they?

MR. SMITH: I am sorry, it has not been tendered to us if they have and Bowman only filed this morning but I think the significant thing for this Court - - -

JUDGE MILLER: The Red Ball is in it, go ahead.

MR. SMITH: The thing to consider is the fact that none of the parties have questioned venue in this proceeding at any time. All answers of the Government, Red Ball, Bowman, Lochway and Johnson, all admit the venue of this Court. In his opinion in 350-Fed. Sup., page 541, Judge Miller found that this Court has venue under Title 28, U.S.C.A., 1398. That is only these late filed responses that question venue. The plaintiff's response is this;





one, this Court has venue because it has always had venue. The Supplemental Complaint relates to the same occurrence event and proceedings that was the basis for the original action that was filed by Rule 15-D, that is, those matters that have occurred subsequent to the fact the filing of the Complaint that are raised by the Supplemental Complaint; so this Court had jurisdiction, it still has jurisdiction. Now, there have been remarks made in the brief that I think are worthy of consideration and we get rid of those immediately, Johsnon Motor Lines, and that brief is one I am more familiar with because we have had it since Sunday morning. It says that this Court does not have venue because there are no parties plaintiff that have a residence in the Fort Smith District. That is incorrect, Arkansas Best Freight System, INC. and Mercury Motor, both, not only have a residency here, their general offices are here in Fort Smith, Arkansas; they are both plaintiffs in this proceeding. Johnson attempts to carry this one step further, and they say, now, wait just a minute, you can't bring ABF and Mercury Motors in here because they did not protest the Jones application, which is subject of the Supplemental Complaint;

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and they cite 28-U.S.C.-A, 1398. Well, I am not content to rely on their evaluations so I would like to read it to the Court; the basis, and this is jurisdiction and venue, is that, excuse me, except as otherwise provided by law any civil action to enforce, suspend, or set aside in whole or in part an Order of Interstate Commerce Commission shall be brought only in the Judicial District wherein is the residence or principal office of any of the parties bringing such action. This does not relate back to the ICC proceeding. It says parties in interest bringing such action and ABF and Mercury Motors brought the action. They were both parties to this proceeding before the Interstate Commerce Commission and if you don't believe me I ask you to refer to 114-MCC, page 770, and referring to Mercury Motors, where it says, "Protest, the Bowman application (also appears) as witness for Gordons in support of Gordon's protest of the Jones, Red Ball and Strickland application." The decision is attached to the Supplemental Complaint we filed and I believe at page 589, of 117 MCC, you will find that Mercury Motors is listed as a party who testified in oppostion to the Jones application. So I think that the question of venue





is laid to rest, not only in theproceedings before the ICC but in the matter in which this case has been structured. Now, remember, the plaintiffs did not cause any delay, this case was decided in December, 1971, by the Interstate Commerce Commission; and it wrote this report (indicating pamphlet) and in that report it recommended that Red Ball, Bowman and Johnson be given certain authority. In that same report it said Jones should not get any authority. Later after Jones filed for a Petition for ReConsideration, which they are entitled to do, the Commission reconsidered and in December of 1972, it reopened that matter on the entire record and purported to give Jones a grant of authority. On May 29, 1973, the Administrative Order came from the ICC and these plaintiffs immediately prepared and filed their Supplemental Complaint. We did not cause any delay, we filed it as soon as we could have; we could not have raised the Jones matter initially because it was not administratively findings. Now, one of the things that the defendant, and I am using the intervening defendants because the Interstate Commerce Commission has not said anything, one of the things that they have said and they have

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emphasized is Jones is different from Red Ball and Bowman and Johnson so you don't need to bring Jones case into the Bowman, Johnson and Red Ball case. Now, that is what they say when they don't want us to file a Supplemental Complaint but when they want to impress this Court by talking about the magnitude of the proceedings they say "and 900 witnesses appeared, part of those witnesses Jones, part of Red Ball, part of them were Johnson," so they want to take the good out of that and they want to leave the bad and say "you consider the bad for the purposes of this Motion." Mr. Riddle, somewhere in this building, has four cartons of materials that constitute the records of this proceedings; and that record is involving all four of these people. It is entertwined. Jones, though they are not a party here, was quoted by the Interstate Commerce Commission at page 589 of the decision in 117-MCC, Jones would not be materially - - would not materially effect these operations and that the grants to Red Ball ,Bowman and Johnson without a grant to Jones, quoting from Jones, "Strikes a death blow to the one of the oldest carriers in the Midwest Central South"; and they come in this Court and tell you they are not





involved and they beg the Interstate Commerce Commission "give us a grant of authority because you have done it to these other three and we've got to be involved"; and now they want to impress on this Court that Jones is out there in the pasture some place out there and is not involved. Now, the question of delay. When we submitted our request to file the Supplemental Complaint we were candid with the Court; we invited the Court to refer to Rule 20-B and Rule 42-a, which gives this Court the right, the power, the descretion and the authority to either hold these matters together or to separate them. We told the Court and we wrote a letter, a carbon copy to the Court and a copy to every one of these defendants, and we said "Your Honor, we are ready to proceed on that Complaint that was filed on October 4; we have submitted all of our briefs as late as July 16, 1973, and we are ready to proceed, just give us a date," and the Court suggested the date of August 13. We are not trying to delay the proceedings, we don't want to delay the proceedings. The Interstate Commerce Commission action in the handling of the Jones case necessitated our filing of the Supplemental Complaint. Now, there have been suggestions and

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arguments that "well - - you could file it some place else". That is right, ABF can't file it any place else and Mercury Motors can't file it any place else; but Campbell, Transcon, Time D.C. and Gordon could all file it some place else. Now, what we - what are we going to do when we file it? We are going to tell that Court [illegible] in Fort Smith, Arkansas, we have got a suit that involves the same parties, involved the same proceedings, has the same record, and we have got jurisdiction down there because of ABF and Mercury Motors but we have decided to come up here or down there, as the case may be, and file this case in your Court"; and that Judge is going to say, "well, when can I get a copy of the record," and we are going to reply to him "just as soon as the Fort Smith Court gets through looking at it and it contains four cartons, they stored it in the basement. The same evidence that was considered by the Commission in 114 MCC was considered in 117 MCC, but you forget 114 MCC because we have got us a separate lawsuit up here". That is preposterous; that is not judicial economy. The same law and the same facts and basically the same arguments are involved and that is whether or not the Interstate Commerce Commission attempted to





grant these four carriers authority on the facts that were before them; whether or not they denied these plaintiffs due process and all of thosematters which we have already briefed; and we are coming to you today and we say we think we are right, we think that the law supports our position to file the Supplemental Complaint. And as I said before I will be glad to answer any other arguments which the Court has that I have not considered in this presentation. I would like to say one other thing; if we reach the point of the filing of the Supplemental Complaint I am prepared today to present to the Court the affidavits in support of the granting of the Temporary Order, Restraining Order against the Commission and in those affidavits you will find affidavits from Arkansas Best Freight System and from Mercury Motors, two of the original plaintiffs in this case, the two plaintiffs upon which venue was originally based, and I will answer your questions.

JUDGE MEHAFFY: I have a question. I noticed in all that list of Intervenows and what not, never mentions Mercury Motors; is Mercury Motors still based here and still in the same posture as far as venue is concerned?

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MR. SMITH: No, Your Honor, as a matter of fact, in this proceeding today we have two affidavits signed by Mr. Montague Williams, who is the Officer of Mercury Motors; we will present those affidavits at the appropriate time. Certainly you can look out the window and you can see their trucks operating every day.

JUDGE MEHAFFY: Your argument is it alone operating here can get venue?

MR. SMITH: Yes, sir, but as to the facts Arkansas Best is here and that gives the Court venue.

JUDGE MEHAFFY: That clears that up.

JUDGE WILLIAMS: May I ask a question; Mr. Smith, wouldn't you be in a better position to argue your position that the action of the ICC was capricious by showing that the ICC voluntarily modified its' Order by asking us to permit you to file additional and supplemental pleadings; why should we let you; we are presented with the question of whether or not the ICC or their Order is capricious; here they have voluntarily set aside the Order in some particulars, why do you want to enlarge the pleadings? Looks to me like it would be to your advantage to say their own actions show that they considered themselves arbitrary and capricious?





MR. SMITH: I think your argument is well taken except we are not in a position to argue the capriciousness of those Orders until we can get them before the Court and the only way we can get them before the Court, since they were introduced in the same proceedings, is to file a Supplemental Complaint and attach them as we have done. We are not, we don't reach the point in our Motions to file Supplemental Complaint of arguing the merits of that decision; we want to do that to show the inconsistency and the overall transaction involving these four intervening defendants and the other applicants that were involved in that proceedings.

JUDGE WILLIAMS: Thank you.

MR. SMITH: Thank you.

JUDGE MILLER: Mr. Glanzer, did you file a document this morning?

MR. GLANZER: No, I did not, Your Honor; I prepared one but I would prefer not to file it because it is incomplete.

JUDGE MILLER: I thought you had filed it. That is what I had thought I had lost.

MR. GLANZER: No, Your Honor.

JUDGE MILLER: I was scratching through these papers for it; all right, go right ahead.

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MR. GLANZER: Your Honor, Your Honors, I think we that we should do a little reviewing here; I know Judge Miller is familiar with the facts and background of this case but as Your Honor Judge Mehaffy said earlier, you had not had the opportunity to familiarize himself with this record. I think we should go back a bit and start in the year 1904 when an application was filed by a Carrier named Roadway, which is here in this Court as the plaintiff. That application sought to open up a traffic between the Southeast and the Southwest, the Southwestern States of the United States, and that triggered a whole series of about 19 or 20 applications filed by many carriers who had headquarters and operations either in the southeast or southwest seeking to bridge that gap. The Commission was confronted with a very difficult choice, whether to let each of those applications proceed separately or whether to consolidate the applications for a hearing on a single lectern though maintaining the separate integrity of each of those applications and as individual cases. A prehearing conference was held and as a result of the prehearing conference ten of those applications were selected for consolidation. That case took an awfully long time to try and to be





decided before the Commission.

JUDGE MILLER: May I ask a question, please?

MR. GLANZER: Yes, sir.

JUDGE MILLER: At that conference when you reduced that number from the 19 or 20 to 10, what happened to those others you did not include in the lawsuit?

MR. GLANZER: I can give a partial answer to the best of my recollection; some of those proceeded independently. Among those applications are some of the plaintiffs in this courtroom; several of those applications were granted long ago; several may have been denied; others may have not prosecuted those applications. I believe Mr. Cross may have a record of each of those applications here in this court room and he may be better prepared to reply than I. And they may be in his brief.

JUDGE MILLER: I think it is in the brief but the question just occurred to me.

MR. GLANZER: May I proceed, Your Honor?

JUDGE MILLER: Yes.

MR. GLANZER: Well, as the Commission says in its' report in the case which came to be known before the Commission as the Herron case because in the reports of the Commission it was the lead application. The Commission said, after this hearing was

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over and after the examiners report came in and examined the petition - - - I am sorry exceptions were filed to these reports, many briefs were filed and the matter came before the Commission and the Commission in its' report in the Herron case said, "this has been by far the most extensive Motor Carrier proceeding ever before the Commission," and it was. There are over 23,000 pages of transcript of testimony. There are nearly 2000 lengthy exhibits in the case; and the pleadings filed by the various parties, the ten applicants plus the sixty-six protestants, some of whom it so happened were also applicants protesting some of the other applicants in the case. Your Honor, I don't think it is any exaggeration to say that the pleadings alone would stretch from just about one end of the Clerk's quarters over here to the end of this table (indicating); I know Judge Miller has had an opportunity to see some of these things; it is lengthy and required a lot of work on the part of the Commission to decide this case. There were delicate transportations issues involved and the Commission did finally decide this case, as Judge Miller has pointed out, in December of 1971 by a Three Member Division constituted by a Statute and that Three Member





Division decided that there should be a grant on a comparative basis to three of the applicants in the proceedings. One of the applicants, Roadway, fell by the wayside of its' own accord; it achieved what it wanted in another way. Another carrier chose not to file exceptions but was carried along in the case anyhow, however, its' applications was denied. That applicant is not here in this court room. That left eight of that eight. The Commission comparatively on the basis set forth in its' decision granted the application of Red Ball, Bowman and Johnson; however, under the Commissions practice that decision didn't become final until petitions for reconsideration filed by the parties could be decided. That petition or those petitions for reconsideration were not decided until the fall of 1972 by a Commission decision of December 1, 1972. It was then that the case became administratively final and ripe for judicial review or for the filing of the Complaint fudicial review before any Court in which any plaintiff, in which any party adversely affected by the result, resided or had a principal place of business. However, also in accordance with the Commissions practice, petitions for a finding of general transportation importance, something like

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a petition, filed with an Appellate Court seekings - seeking a rehearing on back were filed. This did not affect the administrative finality of the case before the Commission. If denied --

JUDGE MILLER: I looked and looked and I could never find anything where any Court had ever commented on that kind of a Motion. I figured ou. what it meant myself, that is to me. I may be wrong, that wanting them to proceed as a general transportation problem; that was because of the enormity of the whole proceeding, wasn't it, and so many people involved and so many systems being involved, is that the basis for that motion?

MR. GLANZER: I think that generally summarizes what the parties who filed that petition thought, yes, Your Honor.

JUDGE MILLER: That is what I thought; had that Motion been granted would that have affected the decision by the Commission?

MR. GLANZER: Had the Motion been granted, Your Honor, it would have been the same as I tried to analogize as if a Court of Appeals had said, "allright, instead of Three Judge Panel to decide the case we will now have, if it is a nine Judge Court of Appeals, Nine Judges will set.





JUDGE MILLER: ..ould it have been submitted to the eleven Commissioners?

MR. GLANZER: It would have been submitted to -- if the Commission was fully constituted, to the eleven Commissioners.

JUDGE MILLER: If the Commission had its' full membership it would have been submitted to the full Commission rather than to a Division 1?

MR. GLANZER: Yes, Your Honor, but the Motion -- that is the Petition, as we call it, a Motion was of course under the Commission's rules submitted to all of the sitting members of the Commission for individual election and for individual vote as to whether or not to grant the Petition.

JUDGE MILLER: All right.

MR. GLANZER: And --

JUDGE MILLER: That explains it.

MR. GLANZER: I can understand whyYour Honor did not figure it out I did not think it was enough of importance to refer to it in the brief, however, I think it should be very carefully mentioned that the majority of the Commission who voted on the case voted against granting the Petition for general transportation importance but I an ahead of myself now, Your Honor. I would like to go back.

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JUDGE MILLER: I am sorry.

MR. GLANZER: The point that I do want to make before I go back is this, if this vote is not as one might imply for himself in reading the various pleadings and papers filed by the plaintiff in this case, the vote is not secret by Statute by Section 17 (3) of the Interstate Commerce Act, anyone seeking to learn the nature of a Commissioner's vote or any matter need only pick up the telephone and call the Secretary's Office at the Interstate Commerce Commission and say, "how did the Commission vote individually on my petition"? And they will be told by Statute.

JUDGE MILLER: I had no thought about that; the only thing I did try to find out what that meant but I can understand now --- those fellows just met and read the record and says, "Oh, well, let the Commission decide, let Division I decide it."

MR. GLANZER: As Your Honor knows I am sure Division I is statutorially empowered to decide these cases.

JUDGE MILLER: I understand that,allright.

MR. GLANZER: I come back to, just before the Petition for General Transportation importance, as Mr. Smith pointed out correctly, in the Commission's Order





denying the Petition for reconsideration in connection with the Red Ball, Johnson and Bowman applications. The Commission, however, did grant Jones Petition for reconsideration and reopened the Jones Proceedings. Thereafter, the Petition for reconsideration was filed and immediately thereafter, before waiting for the result of that Petition to come down the plaintiffs instituted this Court action and refer to the filing of the Petition for general transportation importance in their Complaint. I am going to jump ahead for a moment and say that one of the things that plaintiffs say entitles them to a joinder or to supplement their Complaint is the fact that they did not note in their Complaint that the Petition for general transportation importance was denied by the Commission. However, that information has been before this Court by virtue of the defendants answer to the Complaint in which we have heard that fact so that is not new to this Court; this Court has known this for many months. We go back; as Your Honor recalls the applications were made for a temporary restraining Order. I was not here but I read Your Honor's decision granting the Temporary Restraining Order.

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Thereafter in December, thereafter the Commission decided Jones - - - Jones' petitioned for reconsideration and in a written opinion the Commission granted the Jones application but whereas they granted the Red Ball, Johnson and Bowman applications on a comparative basis the Commission here very carefully distinguished and said "we are not granting this application of Jones on a comparative basis, we are granting it because we have not given authority to these others, this is something separate within this proceeding" and they made that point at page 594 of their decision, which appears at 117 MCC, beginning at 586. Now, they made that quite clear, this was not handled, although on the same record and on the same record in the same general consolidated proceeding, the basis for the grant was entirely different, although there was some overlapping of necessity in order to permit Jones to serve the points, the separate points that it was given the authority to serve.

JUDGE WILLIAMS: I don't want to break your chain of thought but didn't that constitute an amendment, the Order, while this case was pending?

MR. GLANZER: No, Your Honor, it did not; you see





that was not the final Order for Jones. The answer is "No, it is not an amendment of the Order which this Complaint attacks". The attempt of the Supplemental Complaint is to attack an entirely different Order in a different docket, because the Jones case got separated out at this point.

JUDGE MILLER: That is, well, yes, that is right, I understand. I wish you would call my attention, I read that about the reasons given by the Commission in granting the Jones application, I remember something about what you said there but my little mind just wont hold everything like it should, or like some of you gentlemen --

MR. GLANZER: If you wish, Your Honor --

JUDGE MILLER: Gave me that page number?

MR. GLANZER: It was 117 MCC, beginning at 586, the case citation is 117 MCC, the page number, specifically is 594, however, there is a slight introduction on page 593, if Your Honor will permit me and if Your Honor will wish it I will read it to the Court.

JUDGE MILLER: I think it is an important point.

MR. GLANZER: All right, Your Honor, under the heading on page 593 of Discussions and Conclusions

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in the Jones case;" the Commission said, "It was determined in the prior report, that is the report at 114 MCC giving the Commission's reasons for the grant that Johnson, Bowman and Red Ball, it was determined in the prior report as noted above that the record presents substantial evidence of a prevading public satisfaction with the available transportation services (largely joint line in nature) from, to and between the areas here under consideration as well as of a rapidly increasing demand and need therein for additional direct single line Motor Common Carrier Service. It was concluded that the volume of traffic shown to be moving would not sustain the added services and operations proposed by all eight applicants and the granting of the applications of all remaining applicants" could lead to unhealthy if not cut throat competition inimical to the public interest."





MR. GLANZER CONTINULS:

The Commission went on and said, "These conclusions in our judgment have not been shown to be in error and are fully supported by the substantial evidence", but as Jones submits, while it was concluded that the supporting shippers had shown a need for service, the prior report fails to grant sufficient authority to assure that numerous shippers in Arkansas, Kansas, Missouri and Oklahoma and a number of shippers located elsewhere which have traffic moving from or to points in these states will be able to obtain the responsive single-line motor carrier service for which they have shown a need.

Neither the successful applicants inherit this, Red Ball, Johnson or Bowman nor the others, Herring and Strickland, would be able to serve a number of the supporting shippers located in the above described four-state area or a number of points therein from or to which traffic has been shown to be moving. Of the applicants, only Jones now holds the authority necessary to insure that the supporting shippers either located therein.

JUDGE MILLER: That's in these four states?

MR. GLANZLR: Yes, Your Honor, or having traffic

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moving to or from this area will be able to obtain the required single-line service.

The only shortcomings in the prior report, therefore, are the failure to recognize this essential fact and to grant Jones authority to serve between points in the four-state area on the one hand, and the other, Atlanta and Birmingham.

There is another paragraph that deals with this, but I think that Your Honor will allow me to go down here and read this sentence towards the end of the paragraph saying, "For the most part the service authorized herein will not needlessly duplicate that authority already granted in Herring and we do not believe that this grant will result in a healthy competition amicable to the public interest. Additionally, safeguards will be taken as more fully described below in order to avoid granting more authority than the pertinent service according to shippers they show they require." They conditioned this grant to make sure that to the extent practical and possible that the Jones grant was not a comparative grant as were the previous grants which are the subject of the order which in turn is the subject of the initial complaint filed in this action.





JUDGE WILLIAMS: What is the date of that? Jones?

MR. GLANZER: This was decided on December 6, 1972, Your Honor, and in accordance with the Commission's practice, was served on December 18, 1972.

Now, as was the case in regard to the previous order involving the other three carriers' petitions for reconsideration of this grant or this report and order were filed and it was not until May 29 that the petitions for reconsideration were decided.

JUDGE MILLER: The real heart of this Jones application that really aroused these, Johnson and others, was the provision with reference to service between Atlanta and Birmingham and down in that particular area, wasn't it? In the last Jones order?

MR. GLANZER: The complaint of the plaintiffs in this case?

JUDGE MILLER: Yes.

MR. GLANZER: I honestly do not know, Your Honor. I don't know what the plaintiffs are complaining about in this case and this is why I asked the question at the outset which counsel represents which party in this proceeding and what are they complaining about individually in the grants, in

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the various grants, in the various dockets issued by the Commission. I am completely at a loss at this moment.

JUDGE MILLER: It'd be a lifetime job trying to figure out what each one is complaining about when you take the whole record, but it seems to me like you take the one that serves the Atlantic Seaboard - that's Johnson, isn't it - It is vitally concerned with the effect of this order of Jones in favor of Jones opening up or changing some of the authority between those points from Atlanta to Birmingham or down in that area.

MR. GLANZER: No, sir, that is not so, Your Honor. I think perhaps Your Honor is referring to someone else. Johnson is an intervening defendant. Jones is not in the case at this point nor have they filed anything to get in the case. Johnson is not a plaintiff in any way.

JUDGE MILLER: No, he's not -- I was not inferring that, but I meant that was the objections.

MR. WIGGER: No, Johnson is not objecting to anything Jones has received. Johnson sits on this side of the table.

JUDGE MILLER: Who is except named plaintiffs?





MR. GLANZER: I don't know, and that's one of the things I want to come to here.

JUDGE MILLER: Go right ahead.

JUDGE MEHAFFY: Let's go 'way back then. Just how did the second order of the I.C.C. adversely affect anybody? Now, let me state it another way. When you go to the root of this matter in the original order, how far could Jones go in that direction?

MR. WIGGER: I think Jones will have to tell you himself, Your Honor. The reason for that, the reason for that is this is a terribly complex geographical situation. Jones -- But perhaps I can explain it this way. I think perhaps Judge Miller has given me an assist on this, something I have neglected to mention. I said in my brief there is a kind of breakdown in the ten applications that were filed with the Commission.

Roadway sought to go from a southeastern point straight south to Pensacola, Florida, across from Pensacola to New Orleans, then up to Baton Rouge. Now, Roadway was a special situation. They were the only ones here, as I recall, that had authority both in the southeast and the southwest at that time and this was kind of a little

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fill-in. But afterwards we had a lot of southwestern carriers saying, "Hey, we have a real stake in traffic now between the southwest and the southeast". These two economically dependent areas are beginning to generate an awful lot of traffic and more motor carrier service is necessary to fill that need so a group of southwestern carriers filed applications and at the same time the southeastern carriers, not to be outdone, said, "Well, if the southwestern carriers want to come east, then we want to go west and we want to fill the gap for the needs of our customers." In addition also, of course, there was the other traffic that was coming in from the northeast to the southwest or the southeast and also from southwest through the southeast up into the northeast and the north.

Now, after the Commission decided on May 29 to deny the petitions for reconsideration and grant the Jones authority, that denial made the Jones case administratively filed and eligible for filing in the court.

There was a petition for general transportation importance filed by the people who sit here on my left and some others and the petition filed for general transportation importance



was denied by the Commission unanimously.

Well, I have come to the point where I said that the disappointed protestants in the Jones case could come to court to seek judicial review. However, who are the disappointed protestants in the Jones case. Well, we have to start with the, I think, Appendix Three to my brief in which I show or try to show the line-up of the plaintiffs versus the applicant in the proceedings before the Commission, and if the Court will look the Court will see that Arkansas Best Freight did not protest the Jones application. They had no interest in it. They can't be aggrieved now if they say they are then they certainly have not exhausted their administrative remedies before the Commission.

Mercury Motors, Incorporated of Fort Smith, they were not a protestant to the Jones application.

Those are the only two plaintiffs which have a residence or principal place of business --

JUDGE MILLER: I don't want to be constantly interferring but the petition that Jones filed for reconsideration, did Jones undertake

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to separate, reach in to this large case, reach in and take its application out of the Herring case that was covered earlier and re-install it as a separate docket?

MR. WIGGLR: It was never other than a separate docket.

JUDGE MILLER: I know it was always a separate docket but -- that is true, but, in other words, he says, "Let's just separate this from this consolidation". Is that in effect what they said?

MR. WIGGER: I think what they said, according to what I just read to the Court, Jones felt that it was restricted by the comparative consideration of all the other applicants and wanted the Commission to decide its case on its own special facts and the Commission did, said that it did.

JUDGE MILLER: All right.

MR. WIGGER: I'm sorry.

JUDGE MILLER: That's all right. Go right ahead.

MR. WIGGER: We have heard from Mr. Smith that well, maybe Mercury Motors might stand in a different category if they came before the Commission as a witness in support of another protestant against the Jones application. That



is true, but I think the circumstances of that might be of interest to Your Honors and I think I should read all of this to the Court as it is very fascinating. This is most fascinating, Your Honor, in regard to Mercury Motors and its opposition to the Jones case. Now, I think it will show -- What I'm leading up to here is telling Your Honors that the Government and the Interstate Commerce Commission are not going to waive the venue and jurisdictional requirements of 28 U.S.C. 1398 insofar as the attack upon the Jones order is concerned.

I would like to read, Your Honors, with your permissions, from the direct examination at this point and also some of the cross examination of the witness who appeared for Mercury Motors at this proceeding, at page 20,28' of the transcript. Dennis Cormack was sworn, questioned by Mr. Stevens: "Give us your name and business address, please." Answer, "Dennis Carmack, Mercury Motors, Inc., 1022 South "Y" Street, Fort Smith, Arkansas." Question: "Mr. Carmack, have you prepared certain material for presentation in this proceeding?" Answer: "I have." Mr. Stevens interjecting at this point: "Before

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proceeding, Mr. Examiner, I believe I am correct that this record does not at this point reflect an appearance on behalf of Mercury Motors, Inc. as a protestant and at this point I would like to enter an appearance on behalf of this company as a protestant in the Bowman case only. It is my understanding that timely protest was filed." Examiner Jessup: "Protest - timely protest was filed?" MR. STEVENS: "That was my understanding. I would like to ask the witness if he could supply the date of that protest." WITNESS: "I can. Mr. Bishop. Mr. Bishop represented Bowman before the Commission and also in this Courtroom." MR. BISHOP: "We meant no point that they did not." Examiner Jessup: "All right. The protest is limited to the Bowman application." MR. Stevens: "That is correct". And the witness -- I'm on 20,285 now -- "That is correct", and the witness is presented in support of his protest of the Bowman case.

I would like to have marked for identification a one-page statement setting forth certain information concerning Mercury Motors. Examiner Jessup: "Sixteen Hundred", and it was marked. There is some colloquy here and a question



and answer and then Mr. Stevens goes on. "Mr. Examiner, I have made an error that I would like to correct at this point. This witness is appearing solely as a protestant in the Bowman case but this witness is also offered in support of the protest of Gordon's Transport in other cases and I neglected to explain that. The cases that Gordon's offers the witness in will be the Jones, Red Ball and Strickland." We now go to page 20,360, and Mr. Bishop has concluded his cross examination and Mr. Blair who represented Jones begins his cross examination, and he says, "Mr. Carmack, when did you prepare Exhibit 1600?" "Approximately a week ago" was the answer, and the question: "And I take it at the time you prepared it that you had not decided to appear as a witness for Gordon's against the Jones application?" Answer: "That is correct. Question: "Or you would have put it in the statement?" Answer: "That is correct." Question: "Would you mind telling me when you decided to be a witness for Gordon's in support of Gordon's and their protest of the Jones application?" And the answer, "It was announced here at 9:30 this morning." Question: "And that is when you decided, is that correct?" Answer: "Yes, sir".

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Question: "All right. NOw, what do you understand that you're helping Gordon's protest in regard to the Jones application?" Answer: "Sir --" Mr. Stevens: "I object. If he wants to state what he understands what the Jones application is, it's up to whether he's going to help us or hurt us". MR. BLAIR: "All right, Mr. Examiner. There have been statements distributed by Gordon's which presumably Gordon's is going to put in evidence which delineates their interest in regards to the Jones application because in spite of my objections we took the supporting witnesses before we got that statement in. I don't have it in the record but everybody has got it and it clearly delineates the Gordon's interest in the Jones application and it's not the entire Jones application, and the objection does not make sense" and the Examiner: "You may be a little too technical, Mr. Blair. We're going to overrule that objection and proceed, nevertheless."

And the question, by Mr. Blair: "Can you answer the question then? What do you understand that you are helping Gordon's in regards to the Jones application?" And the answer, "I don't know."





That is the extent throughout this proceeding how the interest of Mercury Motors, Your Honors. One of the reasons why I want to know who is representing who here is I would like to know who is representing Mercury Motors because they never filed, as near as I can find out, and I looked through every pleading in the Commission's docket. I do not find a single statement subsequent to this event of Mercury Motors' interest in this case. Their name does not appear in regard to any pleading that I can find out, and I don't know who represents them at this point in time. I assume Mr. Stevens, but I'm not sure, because they never once dignified this proceeding by ever again appearing before this Commission in this long, complicated, voluminous case.

That is why the Government at this point must point out that there is no venue plaintiff in this action that was commenced last year who has any interest in the Jones grant.

JUDGE MILLER: Is that a convenient place for you to stop, where we could have a recess for a few moments?

MR. WIGGERS: Yes, sir. I'd like to go on to something separate at this time.

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JUDGE MILLER: All right.

JUDGE MEHAFFY: Court will stand in recess five minutes.

MARSHAL: Court will stand in recess for five minutes.

JUDGE MILLER: I'd like to have about ten.

MARSHAL: Court will stand in recess for ten minutes.

RECESS



11:15 a.m.

MARSHAL: Everyone will rise. Court resumes in session. You may be seated.

JUDGE MEHAFFY: You may proceed.

MR. WIGGERS: Your Honors, may I interrupt myself at this point and say I am about to go into something else, at least I would like to at this point. However, is there anything in what I have said so far that Your Honors have any concern or any additional questions that you might ask me at this time before going to the rest of it, the rest of the presentation?

JUDGE MILLER: As far as I'm concerned, I don't know how you could enlighten us any further on those questions, but that does not remove the confusion within my mind. You would perform a miracle if you did that.

JUDGE MEHAFFY: All I can say is, let's get along with this. We have others to hear from and pretty soon the day will be gone.

MR. WIGGERS: Your Honor, Judge Miller has indicated that this motion of plaintiffs is a matter committed to the discretion of this court, and addressing myself to that discretion I would like Your Honors to be aware of what the United

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States Supreme Court said in 1948 - sorry, 1949, case of United States versus Interstate Commerce Commission, at 337 U.S. 426.

JUDGE MILLER: What's the name of the case?

MR. WIGGER: United States versus Interstate Commerce Commission.

JUDGE MILLER: All right.

MR. WIGGERS: At page 442 they refer to the Urgent Deficiencies Act which Your Honors know is the popular name of the Act which grants the right of judicial review in a statutory three-judge court of decisions of the Interstate Commerce Commission. And the Court emphasized at that time that the Urgent Deficiencies Act of 1913 abolished the Commerce Court and transferred its jurisdiction to District Courts composed of three judges. In considering this Act, Congress was urged to bear in mind the necessity for providing a forum that could expeditiously review Commission orders of widespread importance and they comment again later on that the Urgent Deficiencies Act envisaged and was designed to obtain an accelerated judicial review procedure.

I urge upon Your Honors that if the motion to supplement the complaint is granted it





means that the order under attack since last fall in which a temporary restraining order was issued staying the operation of the Commission's order granting authority to three carriers to serve the public will be delayed still further because this action against Jones cannot possibly become ripe for judicial review and disposition for another five months at least because it will require that much time for the briefing just as it required almost eight months for the briefing of the case that is already before the Court that is ripe for argument and disposition because all the briefs are in, as Judge Miller said, I don't know what else can be said about the Commission's order granting the authority to Red Ball, Johnson and Bowman by the parties in this case.

We feel that if the motion is granted there will be prejudicial delay in the determination by this court of the order granting authority to Red Ball, Johnson and Bowman.

JUDGE MILLER: I'd like to ask a question right there. I am fairly familiar with what you're talking about, the delay and so forth and so on. Now, Jones is not at this time before this court. I mean, the order that has brought

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necessitated the filing or the ultimate filing of the supplemental complaint. Now, suppose we overrule the the motion and refuse to let them file a supplemental complaint. We go ahead. Then what would be before us would be whether the validity of the three orders of Johnson, Red Ball and Bowman -- that's right, isn't it?

MR. WIGGERS: (Shakes head in affirmative).

JUDGE MILLER: Now, we act on those. Now, where does that leave these people that are protesting the Jones part of it?

It may be -- Well, I don't know.

MR. WIGGERS: It does not leave them without remedy in the court, Your Honor. They have every right under the statute that they had before. Those who are parties interested in the event have a forum to air their grievance under the statute.

JUDGE MILLER: The only thing, until the suit was instituted by those people and the court had an opportunity to consider whether or not to suspend the operation of the Jones order, he could go -- he could go right into business, couldn't he?

MR. WIGGERS: Yes, Your Honor, if the stay of the



type that was issued by Your Honor against the initial order in this case which prevented the operation of the Order only, that is, prevented the parties from conducting operations under the grant.

JUDGE MILLER: The three.

MR. WIGGERS: The three.

JUDGE MILLER: Jones would have no restraint until some other proceeding was instituted.

MR. WIGGERS: Yes, and Your Honor, as Judge Findley has said, I am sure that one of the plaintiffs or one of the parties who is aggrieved will win the race to some forum and they will be able to bring their action, present their complaint for the grievance to a United States District Judge who will be able to act in the premises, and you know, Your Honor, that is exactly what some of the plaintiffs in this courtroom said before the Commission when they filed their petitions for reconsideration of the Jones grant.

For example, as the Commission's order of May 29.

JUDGE MILLER: Who was it filed the motion for reconsideration of the order, entering the order in favor of Jones?

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MR. WIGGERS: All right, Your Honor. The order shows the following. It was a joint petition of Mercury Freight Lines, Inc. and East Texas Motor Freight Lines. They filed theirs on January 17, 1973, for reconsideration. There was a joint petition filed by Transcon Lines and Time D-C on January 17, '73, for reconsideration. There was a joint petition of Roadway Express, Inc. and Roadway Express, Inc. of Mississippi filed January 17 for reconsideration.

Now, the petition, the joint petition of Campbell 66 Express, Inc., Gordon's Transports, Inc. and Red Lion Transfer and Storage Company, Inc. filed January 19, 1973, for reconsideration embraced a request that the Commission hold this proceeding, meaning the Jones proceeding, in abeyance until this court decided the case against the three carriers, Red Ball, Johnson and Bowman. They were able to separate it in their minds then, but now --

JUDGE MILLER: I did not see those petitions. I guess, of course, it's in the record, the whole record. I kinda shied away from that whole record. I can't lift those heavy objects any more. That bothered me a little bit.

JUDGE WILLIAMS: Let me ask a question. Do you care





to comment jurisdictionally what status the Jones petition is in when it was granted by the Interstate Commerce Commission in December of '72, three months after this court entered a temporary injunction presumably to have everything in status quo?

MR. WIGGERS: Yes, Your Honor. I can see Your Honor may believe that Judge Miller stayed the Commission's action with regard to Jones. I did not read the temporary restraining order to indicate that.

JUDGE WILLIAMS: Does it place this court in the attitude of trying to review a constantly changing order that if the Commission keeps making amendments and changes and one thing and another, does it put it in the attitude of trying to review an order which is not stable and that the Interstate Commerce Commission can change if itwants to?

MR. WIGGERS: I don't know if I completely understand your question. It is correct to say that the Interstate Commerce Commission's orders until final and in this case final would be the issuance of the certificate filed with the Commission for proper cause to take back an Order. I do not think that is reall what is involved here.

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JUDGE WILLIAMS: We're talking about two different things. We recognize that this is a field in which the Interstate Commerce Commission has the expertise and the exclusive right. We only review within the limits, but when we are trying to review it, are we placed in the position that the Interstate Commerce Commission can change it, modify it, while we're trying to review it?

MR. WIGGERS: I don't think so, Your Honor. As I understand Judge Miller's order --

JUDGE WILLIAMS: Isn't that what has occurred in this case?

MR. WIGGERS: No, sir, I don't think so, Your Honor. I think Judge Miller's order as I recall it and I don't have a copy in front of me, did not go to Jones at all, did not go to the Commission's reconsideration nor was he requested to issue a T.R.O. in regard to the Jones aspect of the case.

I think all parties at that time considered Jones to be a separate proceeding and it was not made the subject of the application for a T.R.O. The Commission was not instructed by Judge Miller not to proceed to review the Jones





case. There is just no restraint upon the Commission from carrying out its statutory duty to review an application filed by -- filed by the applicant Jones. I am indebted to counsel here who has given me a copy of the decision of Judge Miller on the temporary restraining order in which it appears at the end the following language. "Therefore -- and this is 350 F.Supp. 547 - I'm sorry, 350 F. Supp. at page 547, "Therefore, an order is being entered today restraining the I.C.C. from implementing any orders herein complained of", and the order that was complained of was the granting of authority and not the granting of reconsideration to Jones.

JUDGE WILLIAMS: I was not carrying a brief for either side, just wanted comments on it.

MR. WIGGERS: We view any further delay in the decision on the original complaint attacking a single order of the Commission granting the authority of Red Ball, Johnson and Bowman to be prejudicial to the public interest. We think that that should be decided and should not be held in abeyance, particularly because there is this eight month old temporary restraining order which should, since the briefs have been before

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the Court, it is in a proper posture for final action by this Court. We think that should be handled at this stage and that the Court should not encumber this case with an entirely separate order of the Interstate Commerce Commission.

I am not going to here try to characterize the action of the plaintiffs in seeking a supplemental complaint in this proceeding.

JUDGE MILLER: Do you have a copy of those motions that you read there, motions for reconsideration filed by those people that you read a while ago?

MR. WIGGERS: No, Your Honor, although I have with me -- All that I have -- Well, of course, it's in the record downstairs.

JUDGE MILLER: I know it's in the record but --

MR. WIGGERS: No, this would not even be in the record. This has not yet been submitted by plaintiffs unless it's attached to their moving papers because this just relates to the Jones case. If Your Honors wish a copy of this order I can give you my copy here. I have interlined certain things.

JUDGE MILLER: I meant those petitions for the review of, or to ask the Commission to reconsider the granting of the Jones order.





MR. WIGGER: No, Your Honor, but I am sure that plaintiff's - one of plaintiffs' counsel probably would have a copy of his petition here in this Courtroom.

JUDGE MILLER: Probably. It had not been called to my attention. As I say, I have stayed away from that huge four boxes down there as much as I could.

MR. WIGGER: Your Honors, I'd like to close in this way by referring to the dissent of Justice Fordyce referred to by Judge Findley in the case of Baltimore and Ohio Railroad Company versus United States, 386 U.S. 372, 472, 1967 decision, and Judge Fordyce, with much perception said, "The history of the I.C.C. Proceedings is a source book for dilatory tactics and a monument to the successful burial of good projects by over-elaborate procedures manipulated by experts in the art." We feel that whatever may be the motivation, the result will be unfortunate delay and since we, the Interstate Commerce Commission, represent no party in this proceeding but the public interest, we feel that the public interest should be considered in the exercise of the Court's discretion.

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JUDGE MEHAFFY: All right.

BY MR. JAMES W. BLAIR: With permission of the Court, I appear for 66 shippers who are intervening, asking they be allowed to oppose the granting of the supplemental complaint who sign themselves Daisy Manufacturing Company, et al.

I think I can answer some of the Courts questions that other people cannot because I am one of two lawyers who was at every day of this hearing from the opening hearing conference to the day oral testimony began to the day it closed.

The plaintiffs refer in their reply brief to the fact that certain briefs were prepared by counsel who took no part in the hearing. I appreciate Mr. Smith was not at that hearing and may well not have understood how that hearing was conducted. It was a consolidated record but the dockets were kept separate. The lawyers entered their appearance in the individual dockets as protestants to individual cases. For example, when Mr. Smith's client, Arkansas Best Motor Freight took the stand and testified in the consolidated haring, I was not allowed to cross examine him. The reason I was not allowed to



cross examine him because they were not in my docket. They were not a protestant to my case nor was I allowed to cross examine Alamo or Red Arrow Freight Lines or many of the other plaintiffs in the original case here who were not in my case.

An example of how far this went is Wentworth Griffin, the gentleman in the blue suit, entered an appearance for a protestant, Time D-C, who protested the Jones application, but because he did not enter his own appearance in the Jones docket he was not allowed to cross examine witnesses who appeared solely in testimony of the Jones case, so that although this case was conducted on a consolidated record there was never a misunderstanding on the part of anybody that the cases were separate cases.

Now, when the order came out granting Johnson, Bowman and Red Ball and the case became administratively final, their case could be taken to court. The order also denied four other applications and their cases could have been taken to court by them. The Jones case was kept alive. It was reopened. It did not become administratively final. Now, if this

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case had already been decided today, if this case had not drug on -- I would not say drug on because I know how long it takes to brief the case -- but this case was filed in this court some eight or nine months ago. If it had already been decided there is no way that I - not I but Jones Truck Lines certificate, there's no way that the Interstate Commerce Commission of the United States of America could be sued to enjoin the Jones certificate in this court because there would be no venue because there is no party in interest who is a protestant to the Jones case who even begins to exhaust his administrative remedies who has his principal place of business in the State of Arkansas, and in my opinion representing sixty-some-odd shippers that I represent, the basic purpose of this motion is to further delay the Jones certificate and these other certificates that have already been delayed eight years. It's been a masterpiece of delay.

Now, if Jones were brought into this case I think the Court would want to give Jones a fair trial. It took something over a year to brief this case the first time it was



ever briefed. It has taken several months any time anybody has ever tried to brief it. I once locked myself up for 30 days and abstracted the record for 18 hours a day and only got a third of the record abstracted. I believe the court would be obligated to give Jones ample opportunity to brief this case and I don't think the court could be persuaded it would not take months because it would take months.

I think the Court may not appreciate also that territorially the Jones case in the way the grant came out was even more effectively severed in interest from the rest of these cases. All of these cases originally revolved about an axis of Atlanta, Georgia and Dallas, Texas and traffic between those two towns. Collaterally, also Birmingham and Dallas, Texas and Birmingham and Atlanta. The Jones certificate as proposed to be issued is restricted against handling traffic between Atlanta and Birmingham or between Atlanta and Birmingham on the other and Dallas, Texas.

Now, Judge Williams, you asked counsel for the Government a question that I think shows somewhere that someone has confused you about

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that Order of May 29th. What happened was that the Jones order was re-opened; our case was re-opened on my filing a petition for reconsideration on behalf of Jones. The Commission then granted in December 6 a Jones grant but restricted it against the Dallas, Texas traffic on the one hand and Atlanta and Birmingham on the other.

Six or seven plaintiffs, none of them Arkansas companies that filed petitions for reconsideration to the grant of the Jones case raised as one of their questions in the Jones grant, you restricted them against Dallas on one hand and Atlanta and Birmingham on the other but you did not say anything about the commercial zones, so that means that they could go out to Arlington which is in the Dallas commercial zone, and they could handle traffic from Arlington to Buckhead which is in the Atlanta commercial zone. Well, when the Commission issued its order of May 29th, I don't know as I would say they voluntarily changed it, Your Honor. They went ahead -- In that order what they were doing was denying the petition for reconsideration, but when they denied those petitions they spelled out that Jones would also be restricted against handling



traffic from Dallas commercial zones to Atlanta and Birmingham commercial zones and vice versa.

Now, Judge Miller asked the question about the Johnson authority. The Jones authority is granted and Johnson authority as granted do not come into play, any kind of interplay at all that I can see because what Jones is primarily left with is authority from the points it has authority to serve in Missouri, Kansas, Arkansas, Oklahoma to Atlanta and Birmingham which are points it did not have authority to serve, and it would also pick up for the first time points on U. S. 82 of Texarkana, Crossett, Magnolia -- I don't remember all of them, Strong, a little town which it does not have the authority now to serve.

Now, the Jones case differed greatly from the other cases in that the other cases were concerned to a great extent with time in transit. How long did it take to move a shipment. A lot of the Jones case was made on cross examination when Jones got the operating witnesses of Time D-C and Transcon and Campbell and Gordon to admit on the witness stand that their company was not serving certain towns at all

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that it had authority to serve, and I have attached as an appendix to my brief references in the transcript to the fact that they were not serving these towns at all or they were not handling certain types of traffic at all. It was not a matter of how long. There was no service whatsoever.

Now, the Commission in its reconsideration recognized that none of these other applications would meet that situation up here in the hills of Arkansas and the hills of Oklahoma and the hills of Missouri and to allow these people to come in at this point and further delay the Jones certificate and assuming they make an argument for T.R. I don't see how they can make the same argument for T.R. they made against these other certificates because its not revenue they would lose because they're not handling the traffic anyway. It would seem to me that you would drag in a lot of new issues in a case that has already been briefed. You would further confuse something that has bothered my mind for eight years anyhow, and so I would submit on behalf of the supporting shippers that to allow the supplemental complaint would delay all



these cases unduly and it would allow the plaintiffs to seek a forum which they otherwise could not seek. It would do one other thing. As I understand, and I've not heard them address themselves to it, the plaintiffs seem to be all attacking the Jones certificate. I could not believe that when I saw it because a number of them had at various times for various reasons said "We will not protest this Jones certificate" and to find Alamo and Red Arrow and Central signing a pleading saying they were opposing the Jones certificate bobbled my mind and I called Jones Truck Lines and said "You all may not be able to believe this", and they said they could not either, and so Mr. Wiseman who is in this room called Central and Alama and Red Arrow and Eagle and said, "Have you all authorized anybody to appear against the Jones certificate?" And they said, "No, we have not. We never opposed it. We do not now oppose it."

One of the plaintiffs who exhausted their administrative remedies and who would be entitled to oppose it, Red Lion Transfer and Storage Company, said "We have instructed our counsel not to go forward against the Jones

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certificate", so I don't know who my enemies are. I am at a loss here to find which plaintiffs are attacking the Jones certificate because they had it, plaintiffs in the captioned cause, which is all sixteen of them, most of which do not have any standing to attack Jones' certificate, so if the court brings the Jones case in, it's going to have a whole new line-up of parties in interest.

It is going to further complicate it in that I think then realistically some proposed motions that my intervenors have filed, if the supplemental complaint is allowed to be filed, to strike parties in interest or to strike parties plaintiff and to dismiss the complaint, and a number of other issues that are not present in this case will have to be heard by the court. I would not think that the court would want to further complicate this case by doing that. As to whether it can do so under the discretion of the court and as to whether these carriers can lie back in the weeds and come in for the first time when they have not shown to the I.C.C. any interest in the Jones case, I pointed out in my memorandum brief that, and I am aware of the doctrine of exhaustion of administrative remedies



is not a brand new doctrine and the Court, if it finds some compelling reason such as there is not an adequate administrative process can say, "Okay, we will not apply that doctrine", but I know of no attack on the administrative process of the Commission. I know of no allegation by the plaintiffs that they have not had an opportunity to exhaust their administrative remedies, and the fact that Arkansas Best and Mercury Motors and all of these others chose not to do that, they ought not to find some cute gimmick here by this supplemental complaint and be allowed for the first time to attack the Jones certificate. To me that's not fair play. To me that is not fair to government. That is not fair to the I.C.C. Is surely not fair to the 222 shippers that said seven or eight years ago they need the Jones service, and how many years are they going to have to wait for a final decision on that. It begins to be a process that is economically and judiciously ridiculous, but I think the court ought to be aware, too, that there might be further complications.

If the court is going to take every case that affects this case into this case,

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the plaintiffs, as my affidavit filed on behalf of these show, are getting new authority every day. The competitive situation changes. Maybe some of their applications ought to be brought into this case if we're going to drag this one in. Where do we stop or start them. Why not stop before you start.

JUDGE MEHAFFY: I was going to ask you how we could do that.

MR. BLAIR: I could say that you could do it by, number one, denying the motion to file the supplemental complaint. Then all my other pleadings are unnecessary. That wipes all them out. I believe if you deny the motion for supplemental complaint you will find that Johnson, Red Ball and Jones will withdraw their motion to dissolve the T.R. I think you'll end that problem and I believe they will ask for -- I believe they wuld be willing to argue the case on the merits today, and I don't know why it couldn't be argued today. Everybody is here. And that case could be decided, or it certainly could be argued and decided on August 13th on the merits.

They have said repeatedly in the briefs -- there's 1100 pages of briefs that we've





got to assimilate, or do something about it.

MR. BLAIR: I think the court would be doing themselves a favor to deny the motion.

JUDGE MILLER: I don't know about that. We can't on --

MR. BLAIR: I think it's in the discretion of the court to deny this motion. I am not sure it's within the discretion of the court to grant it. I don't know that the court can subvert the venue statute, 28 U.S.C. 1398, and drag Jones into a court that he could not be drug into any other way by saying that this is a supplemental complaint. It's not an occurrence in that case. It was on a separate docket. It had separate parties, had separate issues, and the trial of the case, cross examinations and appearances were kept separate. It's true the record is consolidated but really is just another public and convenience, necessity in this case. It does not begin to compare with the magnitude of Arkansas Best's purchase of Youngblood or the many other expansions that some of the other plaintiffs make.

JUDGE MILLER: Don't mention Youngblood. I've got that one, too.

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JUDGE WILLIAMS: Aren't you saying that a great portion of this voluminous record does not apply to the original suit by Johnson, the three carriers, and that we've got a tremendous amount of record that is not competent?

MR. BLAIR: Let me give one example. The Roadway application did not have anything to do with anything in this and you've got a couple of hundred witnesses in there for Roadway and a territory, and the only thing they had in common was that they was in the case anyway and wanted their case heard, and some of the protestants to their case were in the case anyway and truthfully, Your Honor, does not have anything to do with the issues before this court and that's several thousand pages of the record.

JUDGE MILLER: All right. I believe we have your ideas.

MR. BLAIR: All right. I do say I have some peculiar knowledge. I was there every day and if the Court wants to ask me any questions that I could draw on that knowledge I'd be happy to answer it.





JUDGE WILLIAMS: Let me ask one other thing. The order that is appealed from here is not a consolidated order appeal; it's three separate individual orders that have denied these three people any remedy.

MR. BLAIR: The docket was carried under a lead docket of Herron. The reason for that, it is traditional on a consolidated record you take the lowest M.C. number and you use that as the lead docket, but I think you will find that when orders came out if they affected everybody they had each ones docket number on there. If they affected only certain carriers, they only had the lead docket and those certain carriers' docket numbers.

JUDGE MILLER: That's what this was from.

MR. BLAIR: I think when those orders be granted they would have the lead docket and their docket numbers but they would not have the other docket numbers, and in my case it was down - the only one left alive, crippled though I was, was M.C. 111231, sub 6-7, which was the Jones docket.

Thank Your Honors.

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BY MR. CROSS: Now, if Your Honors please, I represent Johnson Motor Lines, one of the intervening defendants, and by agreeing to conserve the courts time I will talk generally about the interest of the intervening defendants in the original action, the action filed last October.

You heard the Commission say that it does not waive venue because of various circumstances. You have heard Mr. Blair tell you and I'm sure you can see that if Jones is brought into this case it is bound to make delay and lots of it. We have a magestive counsel in Mr. Blair and his enemies over here. There will be more motions, more procedural gimmicks going on. This case, if Jones is brought in, will not be ready to submit it, I would estimate, until the first of 1974, perhaps later.

Meanwhile the intervening defendants, Johnson, Bowman and Red Ball, have been restrained - they have not been restrained but the Interstate Commerce Commission has been restrained from implementing the ord of certificates to Johnson, Bowman and Red Ball. We're sitting here, as a practical matter, the sufferers under





that restraining order. But for that restraining order Johnson and Bowman and Red Ball would have the certificates, would have instituted the service that the shipping public testified to in this case over and over again, so we are the ones hurt by the delay.

We have fully briefed this case. We have been confronted, Your Honor, with plaintiffs brief, and I hesitate to use this word but which really are a smear campaign against the Commission and against us, the intervening defendants, primarily Johnson, which have so little merit and if we ever get to the merits we will show you that, that is delay. It has to be delay. So that we are the ones that suffer by the delay.

As undoubtedly this motion which came in here June 29th, it triggered Johnson's motion to dissolve the temporary restraining order. It is obvious that if this case comes in, the court ought to act on the T.R.O. and more readily on the application for preliminary injunction. Since the application for prelininary injunction and the criteria for granting or denying of it is the liklihood of success on the merits, there ought to be at that time - we're ready to go - on the

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merits of this case. Let's get to these merits. Let's not wait for Jones to come in here, argue its merits, then get to our merits and keep this in mind, oral argument is not enough. The court has to make a decision and it seems to us inevitable that if the court lets Jones' case come in here, that it would necessarily then delay its disposition. It could hear the case tomorrow but it would necessarily mean that the disposition of the original complaint, the decision on the original complaint, would be held in abeyance until Jones was ripe, sometime in the early next winter. Then we would get our decision in a consolidated decision. But the intervening defendants who have been before this court since October are ready to go now on the merits. They want the decision on the merits now.

The lifting of the T.R., and I want to be very practical, would not give us complete relief. If the court, for example, is thinking well, we will take under consideration lifting the T.R.O., let these fellows get their certificates, let them get operating, then we will keep the case going, we'll let Jones in, we'll keep the case going 'til next winter sometime





when we can submit both of them. That is not a solution, Your Honor, and I speak for Johnson in this particular.

The service that the public supported the Johnson application for, was the handling of small shipments primarily. There was other, but primarily Johnson is a small shipment carrier. If it gets the certificate and it is faced with this, if it gets the certificate by lifting the T.R.O. and has to sit here then to worry about these merits until next winter or whenever the court could decide the consolidated cases, assuming Jones comes in, is in this dilemna. It cannot go out and invest the money needed to handle small shipments. Trucking companies cannot pick up and handle and distribute and sort and segregate small shipments without the investment of considerable funds. As prudent businessmen, Johnson - to its stockholders Johnson could not as a prudent businessman, invest the money in buying terminals and - in all the new cities its' going to serve, pick up delivery equipment, sorting and segregating equipment and institute this needed, the public needed small shipment service while this case was sitting here having been fully briefed

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now on our part of it and waiting for Jones to become ripe. That would not be prudent business. Now, Johnson could do it and it would be some benefit to Johnson to have that certificate issued. It could get started. It could handle certain truck loads. It could arrange intermediate type of handling. It could provide some of the service that the public needed, but it is certainly, as a trudent business man, could not invest all of the money needed to provide the complete service they needed.

Now, just one more point. Your Honor, Johnson does not oppose Jones. The grant to Jones and the grant to Johnson are completely separate. There is not one common point on the Jones system that is on the Johnson system. But what plaintiffs are doing is asking Johnson to sit here until they bring the Jones case here, try the Jones case, then decide Johnson and Jones together, the awards to them, decide the agency or Commission proceedings, so there is no relationship. Johnson did not oppose Jones before the Commission. Jones did not oppose Johnson. They did not even participate in these other cases, and the cases were separate and distinct. Each had





their own separate docket so that we're the ones hurt by the delay. The delay is inevitable. The offer to hear this case or try it promptly as a condition to bringing in the supplemental complaint just is not acceptable, Your Honor. Trying a case of this kind is this. We're in appellant procedure. There is no trial. Argument on the merits. So that any time the three judges can get together, and I know that's difficult, a difficult process, but any time they can get together they can hear the oral argument. The trick is the disposition, and it's certainly -- If you let that supplemental complaint come in here it must be in your minds that it takes a joint disposition because there would be no other reason to bring it in here in the first place. So it's the disposition we're concerned about, not just getting an opportunity to orally argue it. We are ready to orally argue it today and we think if you deny this motion and you want to take up the question of the preliminary injunction, we would ask that you merge it right into the permanent, hear our argument, take it under disposition and decide it promptly.

Thank you, Your Honor.

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JUDGE WILLIAMS: Before you go, do you concur in Mr. Blair's explanation of the consolidated case known as the Herring case being nothing but a convenient manner in which a multitude of cases have been carried along separately and individually?

MR. CROSS: I do, Your Honor. I think Mr. Blair said there were two lawyers that were there.

JUDGE WILLIAMS: Is the evidence that composes our record then a great portion of it in your opinion is not admissible, should not be considered by this Court?

MR. CROSS: Certainly as Mr. Blair pointed out, in the Roadway case you've got a lot of evidence down there which is in the Roadway case. It's not here and will never be here. Roadway withdrew it. The evidence the shippers gave for the Johnson service is not the same evidence that they gave as to the need for Jones' service because the two authorities aren't the same. They're different, territorially different.

JUDGE MILLER: Is this footnote -- I think this is true -- Does anybody dispute this footnote on Number Three on Jones brief that was submitted by Mr. Cross on the 23rd?





MR. CROSS: That's me and I have that memorandum in front of me. Footnote Three on page Three?

JUDGE MILLER: It's grounded on evidence of better need of transportation between the eastern seaboard and the Gulf states on the one hand and on the other specified cities, Mississippi, Louisiana and Texas, that Jones' award is grounded on the public need for better service between Arkansas, Kansas, Missouri and Oklahoma on the one hand, and on the other, Birmingham and Atlanta. That is the way it works out?

MR. CROSS: I wrote that, Your Honor, and I think it's the facts. Whether someone disputes it would be up to someone else to say.

JUDGE MILLER: That gives explanation to the order that the Commission entered in May - I mean on - well, it's attached to Exhibit 8 to the Complaint - to the Motion in this case where they corrected their original order.

MR. CROSS: I would not phrase it a correction. They reconsidered the Jones docket which was their second docket. They reconsidered it and took a different action on it, but I don't suppose - well, it's a matter of semantics or what you call it, but it's really a reconsideration of an order.

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JUDGE MILLER: In that original order as counsel pointed out, traffic moving between Atlanta, Georgia and Birmingham, Alabama, and traffic moving between Fort Worth and Dallas, Texas on the one hand and on the other, Atlanta and Birmingham, Alabama, that was stricken.

MR. CROSS: As I understand the Jones award, Jones - the Commission in its second decision in Jones restricted the Jones award against any service between Dallas and Atlanta or Dallas and Birmingham so that it ends up that the Johnson award --

JUDGE MILLER: And in their commercial point zones, too?

MR. CROSS: Yes, Your Honor, and it's that award that makes the distinction between the Johnson. Johnson, for example, got authority between Atlanta and Dallas. Jones did not get authority between Atlanta and Dallas by that restriction.

JUDGE MILLER: That correction or change of that order was necessary because of those very facts.

MR. CROSS: Johnson and Jones were not in a comparative situation.

JUDGE MILLER: I understand.



MR. CROSS: That restriction in Jones just made it completely different awards to serve different public needs.

JUDGE MILLER: All right.

MR. CROSS: Thank you, Your Honors.

* * * * *

MR. SMITH: I have just a few brief remarks I'd like to reply if I might.

JUDGE MILLER: I don't know of any reason why you shouldn't.

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BY MR. DON A. SMITH:

When we started out several hours ago it was my understanding that we were going to argue the question of whether or not the plaintiffs would be allowed to file their supplemental complaint. Johnson had filed a brief in opposition. The Government had written a letter. And Bowman had filed something this morning and had given it to us.

Without attempting to mislead the Court and following the characterization of Judge Miller, I thought we were going to argue two things. Number One, is there venue? And Number Two, will this create delay.

We have had two citations presented to the court. One was from a dissenting opinion in the Baltimore Ohio case which Mr. Glanzer said was applicable to the plaintiffs, characterizing us as being experts in delay. The second citation was a 1949 citation, United States versus Interstate Commerce Commission, which I think is a proper way that we should consider the Interstate Commerce Commission in this matter, and they refer to the Deficiencies Act.



Now, I respect all of these attorneys. I don't particularly appreciate being called an expert in anything because I don't consider myself one, but the derrogatory remark of being an expert in delay, I certainly do not appreciate.

Now, we have written a brief and we have argued to this court that our supplemental complaint is not filed for the purpose of delay. I have called Mr. Cross on the phone, I have written letters to everyone saying that we wanted to argue this case before this Court and Judge Miller had recommended the week of August 13 as being available.

We have listened this morning to the contentions again, "You're just going to delay". Well, I'll tell you what. I want to make this proposition to the Court because I think I am going to do the Court a favor and I know I'm going to do myself a favor. I don't want to have to listen to any more oral arguments. I don't want to be accused of being cute and making up gimmicks or using smear tactics or being an expert in delay. I suggest that with this Court's permission that we bring those four cartons of documents up there,

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have them marked as an exhibit in this proceeding, and I assure you that the plaintiffs in this cause will submit to this Court recommended findings of fact and conclusions of law within seven days from today, and you can consider this case on the briefs without having to go through the ordeal of listening to any more oral arguments.

JUDGE MILLER: You're talking about the main case?

MR. SMITH: Yes, sir. The one filed on October 4, 1972, and the one that we're just simply trying to bring this court up to date on with the subsequent orders that have been issued by this Commission.

I want to put at rest once and for all that we are not here to delay. The Federal Rules of Civil Procedure give the court the prerogative to hold separate trials. We're asking you to do that. We're also asking you to follow that procedure and we will eliminate this question of delay and we want you to decide it and not worry about the Jones case except as it relates to the arguments that we have advanced in brief.

Now, I'll get back to the next question, this question of whether or not they waive venue. The Interstate Commerce Commission





says we've got a brief but we don't have it in final form and we're not going to submit it to you. Did you hear any cases cited in there that indicate the question of venue as even an arguable point on supplemental complaints? You did not. Did you hear them challenge the reading of 28 U.S.C. 1398 where it says "Any party in interest". Did not say one thing about having to be a party before the Interstate Commerce Commission.

Gentlemen, I have an Interoffice Memo that we prepared when we were researching the question of filing the supplemental complaint. It does not have a caption on it, but I'll be glad to run down to the Clerk's office and Xerox it and ask the Court to consider 49 U.S.C. 8305 Section 17 (9), 28 U.S.C. 1336 (a), 28 U.S.C. 1398 (a), 28 U.S.C. 822, 23, Atlantic Coast Line versus I.C.C., 149 Fed. 449; Alton Oil Company versus United States, 315 U.S. 15; The Encyclopedia of Federal Procedure, Third Edition, Section 73.123, and all the other cases that we have got in this to support our position.

No one filed a motion to dismiss this case for improper venue. This Court has gone through almost two and a half hours of listening to people talk about how they were in the hearing room for a

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long time and how they understand this thing and we never have got to the gut issue and that is who is challenging the venue in this proceeding and for what reason and based upon what authority. There is no authority. That's why they can't show it to you. That's why they want to talk about delay. We put that to rest. Now, let's get on with the business of the day. We're asking permission of this Court to file the supplemental complaint.

Judge Williams asked an extremely penetrating question, several questions. I was interested in the explanations. The first question that he asked was, "Now, gentlemen, do you consider that the Jones case is completely separated than the Johnson case, for example?" And the response was, "Yes". If you will look at the order which is attached to the 114 M.C.C. and you look at page One, the Order of the Interstate Commerce Commission dated 30th day of December, 1971, as the lead caption Herring Transportation Company, there is not any order under Herring Transportation Company. Has McLain, Red Ball, has Deaton, Has Floyd Beasley, Strickland And we get down here to Bowman, Johnson and Jones, and then the Order starts to read -- it was not a separate order. It was one order. In 117





M.C.C. the Interstate Commerce Commission, and I have quoted from this before but I would like to review it with the Court for just a moment. The application of Jones, quoting from page 587, and the applications of nine other motor common carriers were heard on a consolidated record and were the subject of a single report and recommended order by two Administrative Law Judges who recommended that all of the applications be denied as indicated in Herring Transportation Company, giving the lead docket and citation, and it goes on and talked about of those applications filed exceptions to the Judges' recommended Order, four southwestern carriers, namely Herring, Red Ball, Strickland and Jones, generally sought to extend their operations to Birmingham and Atlanta. In other words, they are talking about these people conjunctively because that is the way it was heard. You have read their briefs. You have seen every one of them, start out by saying "This was the largest motor carrier operating case. We had 900 witnesses". And you have heard that every since we started until today when Judge Williams asked the question and they looked down and found out that they had been trapped. Now, all of a sudden we have got to quick step. No,

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no, don't consider all that record. Just consider what we had to say. Read the Commission's report. It does not talk about individual witnesses as such. It talks about collectively this so-called need. Those are the issues before this Court. That is why we want to file the supplemental complaint and that is why we have brought it as a subsequent action, occurrence or event to the initial basis for our litigation here, and Mr. Blair said he realized that I did not have the benefit of sitting in there in the hearing all of those years. Neither did the Court. But the Interstate Commerce Commission, and when he talks about Texas, Oklahoma, Kansas and Missouri, he forgot to mention one very important thing and that was that the Interstate Commerce Commission also granted authority, and I will use his words, from the hills of Chicago to the hills of Atlanta, Georgia, in direct competition to Arkansas Best Freight System.

Arkansas Best Freight System is a proper party to this action. It was a plaintiff originally and it is prepared to submit its affidavit in support of the grant of the temporary restraining order and this Court has got jurisdiction whether or not they file their brief or whether the





Interstate Commerce Commission wants to waive venue or not.

We need to get to the law of this thing and the law is this court has jurisdiction. This court has venue, and if we go out and this court says, "Don't file your supplemental complaint and we deny it", there is not one thing that prevents us from going back to this Clerk's office and filing a complaint and asking for them to be consolidated. The record is already here. It's in front of us.

Judge Miller asked a question concerning whether or not those petitions for reconsideration were filed. They are filed in this record, Your Honor, and they have been as they were tendered by the plaintiffs in this case. We have given copies to all of the defendants and intervening defendants of what we have put in the record and under the Jones case.

JUDGE MILLER: They are mentioned in Exhibit Light, too.

MR. SMITH: Yes.

JUDGE MILLER: I knew that. It's a little bit difficult to keep all these things in mind.

MR. SMITH: I don't know whether it was because

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Mr. Cross was primarily interested in Johnson that he made the statement that Jones and Johnson are not in opposition to each other. I think important and of significance is the absence of the statement which he made to show that there was conflict in the authority purportedly granting to Jones that involved Bowman and Red Ball. Then if you think that this was just one individual little segment to Jones, one little individual segment to Red Ball and to Bowman, that's a misnomer and you should not be misled. Jones, in its evidence, is just as much an integral part of the record before this court and the decision for review by the Interstate Commerce Commission as any other party before that proceeding.

Now, the question was asked Mr. Glanzer, and I certainly am interested in that response. They said -- I believe his statement was the Jones matter was decided by the Commission independently. Well, the part of the record that Judge Miller asked him to read did not coincide with his earlier statement. But I would point out to the Court and I think this is veryimportant, there were three carriers in the proceedings, Bowman, Johnson and Jones, that referred to themselves as the trinity.





The put evidence on in conjunction with each other, and to come in now and say "We don't know each other and this was a separate action" is almost laughable and it's laughable even to the greater extent that when Mr. Blair filed his brief with the Interstate Commerce Commission in support of his petition for reconsideration he said Interstate Commerce Commission, the witnesses that you used to grant authority to Red Ball and Bowman were my witnesses and yet you deny my application with my witnesses. It's not fair. He used that same argument again today, that it was not fair. The significance of it is if you read the Jones decision in 117, the reference constantly is that - to the Herring case. The evidence before the Commission in the Herring matter. It was all on this consolidated record. Do not be beguiled into believing that it was separate and apart.

One other thing. In 117 M.C.C. the Commission adopted the report that was in 114 M.C.C. and referred to in its reference to the Trial Examiners.

JUDGE MILLER: They made the same statement in the original.

MR. SMITH: That is correct. So in conclusion,

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we're asking the court for permission to file our supplemental complaint. Since we've gotten into the other issues we ask this court, (1) to recognize that this Court has venue because of A.B.F., Mercury Motors, and (2) we ask this court to allow us seven days to submit our findings of facts and conclusions of law, take that case and decide it as it was originally filed and has been supplemented.

JUDGE MILLER: The original case was decided.

MR. SMITH: Yes. There's things that we have brought before the Court and they should be considered, but as far as Jones and its T.R.O. we ask the Jones not to delay for the benefit of Johnson or anybody else. Decide the case and don't go through the ordeal of having to listen to me and other people argue the thing. Let's have it submitted, and we'll mark that for identification.

JUDGE MILLER: What do you mean by that, Mr. Smith? Decide the whole case? And the case as made by you in your supplemental complaint?

MR. SMITH: No, Your Honor.

JUDGE MILLER: Well, then, I understand.

* * * * * *





BY MR. STEVENS: If it please the Court, I find myself in need to make a statement by virtue of certain statements that have been made in pleadings and from the rostrum today.

JUDGE MILLER: And you are --

MR. STEVENS: Mr. Stevens.

JUDGE MILLER: Let me talk to these other gentlemen --

MR. STEVENS: I just want to make an explanation to the court, not submit any further argument.

* * * * * *

(At this time the Judges confer among themselves)

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JUDGE MILLER: All right, Mr. Stevens.

MR. STEVENS: Mr. Smith can make it for me. Either way. But as counsel I feel it imperative that I clarify a representation that has been made to the Court.

THE COURT: All right.

BY MR. SMITH: Mr. Stevens, I'm sorry I failed to mention this, but it is an important consideration. In the affidavit that was filed by Mr. B. J. Wiseman representing Jones Truck Lines and referred to by Mr. Blair in his argument, a statement was made concerning Red Lion Transfer and Storage and its

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participation. I believe the Court, in referring to Mr. Wiseman's affidavit, will say that Mr. Wiseman has talked to somebody who he has not named and that they are not in opposition to the Jones matter or words to that effect and that they instructed counsel not to participate.

I do not know whether that evidence is probative or not and I really seriously doubt that it is, but because it was said in the affidavit and because it has been referred to in arguments before this court I think it is important that this court hear the telegram addressed to Mr. Stevens, Attorney at Law, Suite 700, Petroleum Building, Jackson, Mississippi. "I assure you that my company continues to oppose the Jones Truck Lines Sub. 67 case since the approval would greatly impair my company's ability to continue rendering adequate service in Arkansas." Signed, L. D. Davis, Secretary-Treasurer, Red Lion Transfer and Storage Co., Inc. And I tender that telegram into the record with the affidavit of Mr. Stevens so that there will be no mistake about that question.

JUDGE MILLER: All right.

MR. BLAIR: Could I be advise d the date of the telegram?





MR. SMITH: 7/20/73 it appears.

MR. STEVENS: I want to make it clear, if I may. I am counsel of record for Red Lion. I have been counsel of record for Red Lion for years before the Interstate Commerce Commission. No one has ever asked me to state the position of Red Lion, and when this came in a pleading that I have received instruction that my client feels thus and so, it did not come from me, and I wanted to be sure that I was current in my representations to this Court concerning the position of my client, and when they called me I asked them the question.

JUDGE MILLER: And you found out you had not been fired?

MR. STEVENS: I found I had not been fired.

MR. BLAIR: If it please the Court, I have a gentleman in the hearing room who says that he has had personal conversation with L. D. Davis that is absolutely contrary to that telegram and the only thing I know, if we're going to get to that issue, is put Mr. Davis under oath and interrogate him as to whether he has told more than one story or how this confusion came about.

JUDGE MILLER: I don't think that's too material to the question before the Court. I don't

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think it's reached the point yet in the supplemental complaint of dividing the sheep from the goats. We don't know whether there will be individuals or not or just class them all as one or the other. That's about what we're going to do. We're going to make some kind of a decision on this motion to file supplemental complaint and then, you know, if we permit it to be filed, to raise a lot of other questions.

* * * * * *





MR. MAURICE F. BISHOP:

May I be heard for a moment in response to the suggestions, or perhaps the stipulation proposed by Mr. Smith?

I am Maurice Bishop. I represent Bowman Transportation at this proceeding, one of the intervening defendants. If I correctly understood Don, Mr. Smith, his proposal was the three cases that are presently before this court be completely severed from any consideration of the Jones supplemental complaint or motion to file a supplemental complaint, and it is now ripe for judicial proceeding with dispatch and towards an early decision. With that we are in absolute accord. That is, insofar as an immediate decision is concerned and complete severance from the Jones case. That becomes a question then for this court in good conscience to determine and that is whether in the submittal and under that proposed stipulation this court feels that it can and would proceed with an immediate dispatch toward consideration of the case under review. An immediate decision on those issues, we join in that. If the court feels it can accomplish that we join in the

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proposition that we submit stipulated facts or proposed facts and conclusions within the seven day period.

JUDGE MILLER: Go ahead.

MR. BISHOP: On the other hand, if there is any question Mr. Smith has likewise pointed out that he could, if he has venue, that he could file a separate lawsuit and we commend to the court that probably is certainly the most advisable course to pursue so that no question can be raised. He says that he could file a separate lawsuit in this jurisdiction by going around to the Clerk's office. We commend that action. Then there would be no question in the world about the complete severance of the Jones case from these cases.

He pointed out correctly with respect to 114 M.C.C. that it listed all cases, but as the Court noted, if you could see that sheet, it listed all those cases separately with separate docket numbers and in the Jones case if you will look at that order which was the subject of the motion for supplemental complaint and as reported in 117 M.C.C., it makes reference only to the Jones application Sub. 67, completely separate and a separate case. Your Honor, you





had a question?

JUDGE MILLER: I believe you just about answered it except did you understand Mr. Smith to say that we go ahead and decide the case insofar as Red Ball, Johnson and Bowman are concerned and then take up separately the supplemental complaint?

MR. BISHOP: It was my understanding that his proposal encompassed two very important and critical things. Number One, is the submission, and Number Two is the decision, because it's the general public that is being delayed.

JUDGE MILLER: Just suppose we did that. Where would we come out? When you start falling you've got to find some place to light.

MR. BISHOP: That's why I say this Court in its conscience and its own mind would have to determine whether as a matter of judicial approach it could work that severance and all doubt could be resolved by a proceeding as Mr. Jones suggested, as Mr. Smith suggested, walk around to the Clerk's office and file a separate lawsuit. Then this court can proceed. Then the Court can proceed in an orderly fashion. If the Court has jurisdiction the Court will so determine.

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JUDGE MILLER: I think you ought to file it in some other jurisdiction.

MR. GLANZER. I'll say this in answer to that. There's well over 100 jurisdictions in which it could be filed. There's well over 100 jurisdictions in which this case could be filed.

JUDGE WILLIAMS: Before you conclude, Mr. Bishop, I suppose the Court should take the whole thing under submission at this time. Is there any matter that has not been thoroughly briefed as far as you and your client are concerned that you would care to raise in additional oral argument?

MR. BISHOP: Insofar as the Bowman, Johnson and Red Ball cases are concerned, Your Honor?

JUDGE WILLIAMS: Yes, sir.

MR. BISHOP: Those have been thoroughly briefed and are ripe for judicial review. It would be this Court's determination whether they desired oral argument. There are some matters --

JUDGE WILLIAMS: In your oral argument would you have anything to add other than what you've already said?

MR. BISHOP: Have some brief answer to the reply brief which we feel raised some new matters. That



could be handled on brief likewise if the Court would desire, and it can be filed along with the proposed stipulations or conclusions of law and findings of fact that would encompass a suggested order to this court for its consideration.

JUDGE WILLIAMS: All right.

MR. BISHOP: Thank you.

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JUDGE MILLER: As I understand, that concludes the argument on reference to the motion to be permitted to file supplemental complaint and I indicated I believe the court would like to determine that question first before reaching the other questions.

We have got a pretty good understanding from the argument here that if that motion is denied I imagine from what was said here they would be glad to, you would be willing to waive your contention or motion that the T.R.O. would be dissolved if the Court went ahead and accepted the record here and approached it on a decision of the merits as soon as could be done.

MR. CROSS: Your Honor, we have a motion that the Court hear the application for the Interrogatory or Preliminary. That motion would raise the liklihood of success on the merits as one of the criteria for the granting or denial of it.

There is also before you the application for a permanent injunction. That goes to the merits. Those two thihgs are absolutely integrally related, so we would suggest that you hear the application for preliminary



injunction that you merge it with the permanent injunction and act on them both.

JUDGE MILLER: But the point I was making, Mr. Cross, is this. Now, following that suggestion and submit the case today on the - the main case today, you can't just wave a wand and up comes an opinion. It is going to take some time on that. Just how much time it will take I don't know, but I will say this. Most of us are busy. I am probably the least busy of the bunch. I don't know just why but - because of the respect of age, you know, I am probably the least busy of all, but I don't see how an opinion could be prepared overnight on this case. I would not want counsel to feel like that it would be coming out next week. All I could say to you, it will come out just as quickly as it can. That's all I could say.

MR. CROSS: So much of this as I see it, Your Honor, is conditioned or is then related to the motion to supplement. If that is granted and that case comes before you that puts this thing in an entirely different posture as to delay, as to time for your decision, time for the submission

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of the supplemental complaint. That is interrelated.

MR. SMITH: Your Honor, I am sorry, I don't mean to be Jack in the Box about this thing. This entire argument of trying to correlate delay with the supplemental complaint is preposterous. This Court has Federal Rule 20 and 42.

JUDGE MILLER: I did not construe that and I don't believe the Court did, that said you had delayed, the delay that has been occasioned in the case, but I don't think you can put your finger on anybody, anybody's delay. The case has just been delayed. That's all.

MR. SMITH: The point I'm making, Your Honor, is this. Mr. Cross is trying to say, "Now, don't grant that supplemental complaint because it will cause delay". That is not true. Mr. Cross is here before this court representing one client and that's Johnson Motor Lines, and he wants a decision in that case. My proposal was that this matter be submitted today and we will furnish you requested findings of fact and conclusions of law and we ask the court to consider it.

JUDGE MILLER: On the main case?

MR. SMITH: On the main case. Now, that does not





have anything to do with his allegation of delay for the supplemental complaint.

JUDGE MILLER: The... would want to submit a motion for T.R.O. in the case made in the supplemental?

MR. SMITH: Yes, but that would not interfere with this court's decision in the main case.

JUDGE MILLER: I understand, but there is also entered my mind -- I think I've got your ideas. Judge Mehaffy says we ought to inquire if anyone else has anything to say, to submit to the Court before we try to consider some of the questions that are concerning us right now.

MR. SMITH: The plaintiffs have nothing more.

MR. GLANZER: I have said all I have to say.

JUDGE MILLER: We're going to take a recess until 2:00 o'clock. In the meantime we will do a little conferring and try to make up our own minds and tell you something about 2:00 o'clock. Court will be in recess until 2:00 o'clock.

MARSHAL: Court is in recess until 2:00 o'clock.

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2:20 p.m.

MARSHAL: Everyone will rise. Court now resumes in session. You may be seated.

* * * * *

JUDGE MEHAFFY: Gentlemen, after due deliberation which most of you witnessed we have come to a conclusion on this facet of the case and I will ask Judge Miller - which will take an advisement - ask Judge Miller to announce it.

JUDGE MILLER: There is very little to say in the conclusion we have reached and that is simply this. We do not believe that there is a sufficient relationship between the motion to be permitted to file supplemental complaint and the issue that is before the court and which was attacked in the original complaint. Therefore, we are going to overrule the motion to file an amended or a supplemental complaint. I might add that we're going to have to put in that order without precedent - I think it is surplus, I don't think it will amount to anything anyway, but we feel like justice to all parties concerned can best be had by separate independent proceeding by these plaintiffs who are dissatisfied with





the order entered relative to Jones filing a separate suit. We feel that is the way to do it because this record, although tried on the same record by stipulations or otherwise, it will take you six months to separate the wheat from the chaff in trying the Jones case. I say six months - it will take me longer than that, but it will take some of you a good long while to do it.

There are a great many reasons which I am not going to enumerate because I don't think it is necessary. The order will go denying and dismissing the motion for authority or permission to file supplemental complaint.

Now, that brings up the motion of the Government and the other defendants relative to the setting aside for the time being the T.R.O. and with that the court feels that motion if presented would be overruled and I understood that you might withdraw that request in view of the fact that in a decision of the case, the main case, we will be confronted with the question not only preliminary,

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but permanent injunction, and I think it is possible, I think it is entirely correct to consider the question of injunction in connection with the merits of this particular case so what we expect to do, unless there is someone that desires to submit further arguments on the merits of the three of the main case, the first case, the first complaint, if there is no further arguments to be submitted on that, we are going to submit that case and take it under consideration and proceed to prepare some decision in that case as quickly as we can. Now, that is the position of the Court. That's about all the Court has to say unless somebody does ask for the setting of a special date for argument on the main case.

I cannot understand how it can be made any clearer. I don't care how clear your arguments are, the question still remains there that is pretty hard to solve and so -- Now, there was one thing that was said by Mr. Stevens - no, it was - well, --

MR. JONES: Mr. Bishop, maybe.

JUDGE MILLER: Yes - that desired to file in view of some statements made in the reply brief from





the plaintiffs in this case, that you desired to file memorandum to refute some of those insinuations which I believe was the way it was stated. We have no objection to that, so if you want to do it you'd better do it in one weeks time.

Now, is there any other suggestions

MR. CROSS: May I have a brief moment to talk to my colleagues concerning my motion to hear the preliminary injunction today? I just want to chat with them.

JUDGE MILLER: Yes.

MR. GLANZER: I am not quite sure I heard what was said. Do I gather that the case will stand submitted on the merits at this point without further oral argument?

JUDGE MILLER: That is our present opinion about it. If anybody else desires to submit I say any objections to that, they may do so, but then we feel like the case has been thoroughly argued. It was thoroughly argued as a matter of fact, in November when the Court heard that motion for a T.R.O. It was pretty thoroughly argued then. But now since that time the briefs have come in and you can

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say what you want to about them but they are pretty full.

MR. OULAHAM: I'm Courts Oulaham. I wonder if the defense counsel could have five minutes to talk among themselves because we certainly don't want to hold the court up this afternoon.

JUDGE MEHAFFY: You may. Court will be in recess then.

MARSHAL: Court will be in recess for five minutes.

RECESS

* * * * *

MR. GLANZER: Your suggestion is acceptable to us. The defendants would like to ask rather than seven days which was suggested by Mr. Smith who is local in Fort Smith - most of us have to get back to other cities and plane travel is not too easy for all of us - it would be appreciated if you would allow us, instead of seven days, until Friday, August 3rd, to put whatever replies we wish to in the mail to the Court.

JUDGE MILLER: Of course, those replies would only go to the new issues made by the reply brief.

MR. GLANZER: I understand that. That's our understanding.

JUDGE MILLER: I just wanted to be perfectly frank





about it. I have no objections. When did you say, August 3rd?

MR. GLANZER: August 3rd instead of July 31st, Your Honor. It's just another three days, because of the travel aspects and whatever additional matters any of us might have in other courts.

JUDGE MILLER: You don't contemplate coming back on that date, do you?

MR. GLANZER: No. My suggestion was that we be permitted to put whatever replies we had in the mail on August 3rd.

JUDGE MEHAFFY: That's all right. Why don't you take until about the 10th or longer.

MR. GLANZER: You're saying August 10th?

JUDGE MEHAFFY: Any time. I'm giving you more time, more time than you asked for, if it takes that to be reasonable.

JUDGE MILLER: I think they could get them in here by that time.

MR. GLANZER: By the 10th then, is that when you said, Your Honor?

JUDGE MILLER: It's all right with me. I don't care.

MR. GLANZER: We're willing to comply with August 3rd date.

JUDGE MILLER: The sooner you get them in here the

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sooner we can get to work on them.

MR. GLANZER: If something develops that additional time is needed, the court is always in business and no problem, but we frankly intend to get our responses in the mail to the court not later than August 3rd which is about 10 days from now instead of seven.

JUDGE MILLER: That's all right. Did you start to say something, Mr. Smith?

MR. SMITH: I don't understand. Are we now opening the thing up for new briefs?

JUDGE MILLER: No. You did not understand what I said. Some of the gentlemen - I believe it was Mr. - well, they said there was some insinuations or statements in the last few pages of your brief, reply brief, that had not been mentioned before that he would like to have an opportunity to reply to those particular statements. That was what I had reference to. It's not going to be any briefs on the merits at all. Where is the brief? I can point out what it is.

MR. SMITH: If the Court understands it obviously then that's the ruling of the court and that is all right, but there's other matters that I think should





be brought to the court's attention, if you don't mind.

JUDGE MILLER: All right.

BY MR. DON A. SMITH:

First, I think it appropriate at this time, if we ask the court to have marked the record which we have earlier furnished to the court so that we will have made our tender of the record to this court.

Now, I would ask some representative of the defendants if this is acceptable so that this matter can be done at this time.

JUDGE MILLER: Whether it is acceptable or not it will be done.

MR. SMITH: Thank you.

JUDGE MILLER: A record is a record.

MR. SMITH: If the Court please, will we be allowed to submit to the court requested findings of facts and conclusions of law?

JUDGE MILLER: I'm glad you mentioned that. That's on the main case, the one we're taking -- Yes, I'd be glad to have it and serve them on each other just like you do, but get them to us because what these men are hinting to me pretty strongly, they want me to prepare something

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for their criticism or for them to criticize and I want to get at it myself pretty soon. I have been at it some but I never did believe, when you've got to do something, you might as well to go ahead and do it, right or wrong.

MR. SMITH: If you please, Your Honor, we will in anticipation go ahead and prepare the proposed findings of facts and conclusions of law.

JUDGE MILLER: You will get them to me in plenty of time.

MR. SMITH: And we will await whatever this thing they are going to file is going to be to see if there are any changes to be made, then we will submit them.

JUDGE MILLER: There is not going to be anything considered by the court on the merits of the case. Just on those two or three items there that you got pretty raw about, and I don't mean that as a criticism.

MR. SMITH: It would not do me a lot of good if I took it that way. Now, Your Honor, one other thing. If you will recall in the structuring of the matter which you have heard today, I think representatives of Jones and representatives of the Interstate Commerce Commission contacted this court





and advised the court that if this court proved to be the forum of the plaintiffs in the Jones case that rather than enter a temporary restraining order without notice, that they be given time in which to be heard on the matter. This information was conveyed to us by Mr. Glanzer and we complied with that, as you know.

JUDGE MILLER: Yes.

MR. SMITH: Serving copies not only on Jones' counsel but also on all parties of record and asked the court to set a date for a hearing rather than asking for the temporary restraining order.

By agreement the Interstate Commerce Commission agreed to withhold the issuance of the certificate to Jones until July 27, 1973.

Now, by the action of this court in denying our right to file the supplemental complaint we are faced with three days from today on the issuance of that certificate because we complied with their request that they be given notice. We would like to ask the Commission if they would agree to agree to an extension of the issuance of that certificate for a period of thirty days to permit us now

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to re-group and as Mr. Bishop indicated, there are other forums available so that we can prepare and file our lawsuit and request that the certificate be enjoined until it can be heard and reviewed by the court.

JUDGE MILLER: I don't know whether we would have anything, have any authority to make a ruling on that or even submit a request, but Mr. Glanzer is here and he is Chief Attorney for the Interstate Commerce Commission. What do you think about that, Mr. Glanzer?

MR. GLANZER: I think I need some time to speak to people in Washington on it. I need at least ten or fifteen minutes to speak to the people in Washington on this, Your Honor. I don't want to deprive these people of an opportunity to bring their action in another forum, but I think thirty days is completely unrealistic at this stage. We have already adjourned the issuance of the certificate for a period of time.

MR. SMITH: At your request.

JUDGE MILLER: Yes, the certificate on Jones order.

MR. GLANZER: Yes, on the Jones certificate. I am prepared to speak to Washington on it in the next





fifteen minutes or so, if I can get through to them on the telephone, but I would also like to speak to the Jones people because they have a voice in this also, but I agree with counsel that they should be given an opportunity to find another forum. No question about that.

JUDGE MILLER: I think that I heartily agree with that latter statement but I doubt whether this court should enter an order just in thin air like this with nothing before it to base an order on asking the Commission to delay issuing the certificate of convenience and necessity, but that is a matter that ought to be reached by agreement between the parties.

I imagine if there's any options on it, amendments can always be made in some court to issue a T.R.O. That's what they're trying to avoid, of course.

Mr. Smith, suppose you and Mr. Glanzer talk, talk that matter over and see if you can't resolve that some way or other.

MR. SMITH: The only reason I brought it to this court's attention was because we had agreed to give them notice at the presentation.

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JUDGE MILLER: I think it would be fair.

MR. GLANZLR: Yes. I'r not trying to step on anybody's rights.

JUDGE MILLIR: I know you're not.

MR. BLAIR: If it please the Court, I think Jones - well, I've been here appearing for shippers rather than Jones I also represent Jones. Jones voluntarily, although reluctantly, agreed to let the issuance of its certificate be withheld and voluntarily extended that on a couple of occasions. I don't know how much more I want to do, but I would like an opportunity to visit with my people about it. I think I have a great deal of interest in how much time is involved.

* * * * * *





... BLAIR CONTINUED:

and I think the Court knows I am taking an unreasonable attitude.

JUDG. MILLER: ...ell, I don't know whether a new case will be filed but I do think that in view of the turn that this case has taken, I do think that these people ought to have an opportunity to contest the Jones without and I think, I guess I am ill fashioned, if things are going to be reviewed by the Court I think it ought to be held in status quo whether it is a TRO or whatever it is except in extradionary case and I don't think that Jones Truck Lines will suffer and I am pretty sure that by the judging of the number of trucks running around on the streets and on the highways I doubt whether any shi... ...uld be seriously handicapped by delaying ten, fifteen, to twenty days; so, if you can work it out, but if you don't work it out then you've got to file some kind of a make shift case and then amend it. You know there is always, as the old saying goes, there are lots of ways to choke a cat, so you can get your relief. Now, there was one other, well, I guess we had better just let that stand; now, there was another Order

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that Mr. Blair, on all your motions here --

MR. BLAIR: I would like to withdraw all these if the Court, please.

JUDGE MILLER: All right, I will - - enter, I will enter an Order ordering them removed anyway so I will just let you withdraw them. I guess that is about all we can do.

MR. DAILEY: My name is M. Ward Dailey, an attorney from Texas. My name is on all these Pleadings. This is my first appearance here. I just want to get my name in the record. If the case has already been submitted, I am not clear whether it has been or not, has it been submitted on its' merits?

JUDGE MILLER: On its' merits, yes, sir.

MR. OULAHAM: Your Honor, I am Courts Oulaham, representing the Intervenow. I am not clear, Your Honor, as to what it is that will be - - we will be permitted to file on August 3rd, because of certain statements were made by the distinguished colleague from Fort Smith ---

JUDGE MILLER: Well, let's see here, Mr. Bishop you raised the question --

MR. BISHOP: Yes, I raised the question. I said





there was some statements in the reply brief of plaintiff that we would like to respond to, very briefly; on the proposition of submission we ask for a few days to do it. This record would show that we have tinely filed all of our briefs and will shortly file this Memorandum.

JUDGE MILLER: He was wanting to know what the statements were in a general way.

MR. BISHOP: I state very frankly, in a reply brief it makes a statement that very frankly I am called on to respond for the first time in my 30 odd years of practice. In one section of the reply brief that certain factual statemnts that we made in that brief were inaccurate and that the legal propositions are unsound. I am not concerned with the legalities. I can understand how different parties with respect to legal propositions, how we would deal with them, I may be overly senitive but I am concerned on the proposition that a statement was made and was factually incorrect and I wish to point out the exact inaccuracy in the statements.

JUDGE MURPHY: May I make this suggestion; I don't think they are pertinent in this but for your

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satisfaction can't you just file an affidavit?

MR. BISHOP: Yes, sir.

JUDGE MURPHY: We are not going to pay any attention to it, I will tell you that, but yet we don't want to have another round.

MR. BISHOP: It is just the first time I have ever been called on in Court in 30 years to make such a response.

JUDGE MILLER: If you are never accused of anything worse than that you are a good man.

MR. BISHOP: I hope so, Judge.

MR. BLAIR: Have you been a Commerce lawyer?

MR. BISHOP: Transportation and Commerce lawyers, that is what we call ourselves, but when I read that section and found out the other side might call you something else ---

MR. BLAIR: Maybe you have been in the experience you have had.

MR. BISHOP: If that is a situation to avoid we would join in and submit on the suggested proposed findings of facts and conclusions of law.

JUDGE MILLER: That is the way we do it, the best way to do it.

MR. BISHOP: All right.

JUDGE MILLER: We are not going to fix any time for





you to put them in here but it will be to your advantage to get them in pretty soon.

MR. BISHOP: Be in very promptly, Your Honor. That is very frankly what we had in mind, that is the portion we want to reply to.

JUDGE MILLER: Well --

MR. OULLIAM: My colleague here has clarified the matter; I was going to join with him but I am a trial lawyer, not a commerce lawyer and I have had poisoned arrows thrown at me before but they never hit me and never will. We will submit a very brief proposed findings.

JUDGE MILLER: Whatever is a commerce or trial lawyer or whatever it is makes it easy on the Judge; I guess that is about all then.

JUDGE MURPHY: I am not sure they understand as I do as I understand it; we will take this under submission?

JUDGE MILLER: That is correct.

JUDGE MURPHY: You've got to sell me and Judge Williams.

JUDGE MILLER: I want you to read the briefs and be familiar with it, then we will meet.

JUDGE MURPHY: I have read the briefs except those

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that came in late.

JUDGE MILLER: I am not prepared to decide it today on the merits, so if that is what you are driving at ---

JUDGE MEHAFFY: No, I am driving at this; I think there might be a little of misunderstanding about the details which you related, the disposition you are going to make.

JUDGE MILLER: I tried to make it perfectly clear, we are taking this under consideration and dispose what was before us.

JUDGE MEHAFFY: If we do that, that is what I understood, if we do that I am not too disturbed about these agreements because we can put that in the Order.

JUDGE MILLER: You have tried enough lawsuits; you know there has always got to be window dressing, that is the way that goes, we have just decided on the record.

JUDGE MEHAFFY: Is that those four cartons --

JUDGE MILLER: I am going to let you take those down.

JUDGE MEHAFFY: If I understand it now, this Court will be in recess subject to call, not on a day certain but on call.





JUDGE MILLER: Why would that be necessary; why would it be necessary to call the Court?

JUDGE MEHAFFY: They may come up with something else.

JUDGE MILLER: No, they won't.

JUDGE MEHAFFY: I said subject to call; if we want to call it we can. I don't want to endanger this Court until this business is over but we will take it under submission and adjourn subject to our call.

JUDGE MILLER: That will be all right; that is the way the Order will be entered anyway in the Clerk's Office.

JUDGE MEHAFFY: Gentlemen, this Court is adjourned subject to recall.

MARSHAL: Court is adjourned.

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C E R T I F I C A T E

I, J. Dale Yarborough, do hereby certify that I am the Official Reporter for the United States District Court for the Western District of Arkansas; that I reported the Hearing had in the above styled cause at Fort Smith, Arkansas, on the 24th day of July, 1973; that the foregoing pages of typewritten matter constitutes a true and correct and complete transcript of said Hearing as shown by my notes.

Dated this 28th day
of August, 1973.



**APPENDIX F**

Joint Proposed Findings of Fact and Conclusions of Law submitted by the United States of America and the Interstate Commerce Commission filed August 13, 1973.

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Civil Action No. FS-72-C-[illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION,

Defendants,

and

RED BALL MOTOR FREIGHT INC.,
JOHNSON MOTOR LINES INC., and
BOWMAN TRANSPORTATION INC.,

Intervening Defendants.

# JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

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AUGUST 1973

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, and RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and BOWMAN TRANSPORTATION INC., Intervening Defendants. | Civil Action No. FS-72-C-65 |

JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

FINDINGS OF FACT

This is an action to set aside the decision of the Interstate Commerce Commission in Herrin Transportation Company, Extension--Atlanta, Ga., 114 M.C.C. 571 (decided December 30, 1971), granting common carrier authority to three applicants--Red Ball Motor Freight, Bowman Transportation and Johnson Motor Lines, Inc.--to transport general commodities by motor vehicle over regular routes between specified points, generally in the southeastern and southwestern portion of the United States. 1/

The proceeding was commenced by the filing of an application by Roadway Express, Inc. on December 7, 1964. By July 30, 1965, applications had been filed by sixteen other

1/ Generally, those points lie west of Atlanta, Ga., Birmingham, Ala. and Pensacola, Fla. and east of Houston, Dallas and Fort Worth, Tex. That territory is approximately bounded on the north by a line from Topeka, Kans. to Kansas City, Mo.

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motor carriers, all seeking to conduct general commodities operations between points in the Southeast and Southwest. As notices of applications were published in the Federal Register, protests were engendered from carriers with existing authority. In order to develop an orderly procedure for handling the applications, a prehearing conference was held on September 9, 1965. Following the conference, ten of the twenty applications were selected for consolidation in one proceeding.

The territorial scope of the applications varied in accordance with the existing authroities of the ten applicants[2/] and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories, by area. For southwestern applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the Southeast. Five southeastern applicants, Bowman, Johnson, Floyd & Beasley, Deaton and Baggett[3/] wished to obtain authority to the Southwest, primarily to Texas points.

Two hearing examiners were assigned to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about eighteen months. Nine hundred and fifty witnesses testified on behalf of the applicants. Of that number, nine hundred and thirty-three were public witnesses,

2/ The full name of each applicant and the docket number of its application, arranged chronologically, by date of filing, appear at Appendix I, annexed hereto. Those applicants will hereafter be referred to by the name shown in parenthesis in Appendix I.

3/ Roadway's status and application were somewhat different in that it already operated in both the Southeast and Southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.



receivers and shippers, who gave evidence in support of one or more of the applications. The applications were opposed by sixty-six protestants six of whom subsequently withdrew their opposition. Evidence in support of forty-eight protestants was offered by sixty-two witnesses.

The examiners' report and recommended order, although finding each of the applicants "capable of performing the operation proposed", recommended that the application be denied on the ground that the applicants "had failed to establish that the present or future public convenience and necessity require[d] the operations proposed."

Eight of the applicants and some forty-one shippers, filed exceptions to the examiner's report.[4/] Inter alia, they collectively excepted to the organization and evaluation of the evidence by commodity to the substantial exclusion of the requirements of the territories and points involved in their general commodities application. Replies to those exceptions were filed and the matter came under consideration by the Commission, Division 1.

In its decision, the Commission found that the examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis'."

4/ Neither Roadway nor Floyd & Beasley filed exceptions. As to Roadway, the denial by the examiners became the order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. See notice of March 24, 1970. The exceptions of the other applicants nominally embraced Floyd & Beasley, which had the effect of staying the finality of the examiners' report as to it. However, Floyd & Beasley's application was denied. Herrin at 114 M.C.C. 612.

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Herrin 114 M.C.C. at 599 at 591. [5]

After an extensive analysis and comparison of the evidence in support of and in opposition to the applications, the Commission concluded that the applications of Red Ball, Johnson and Bowman should be granted. Herrin, 114 M.C.C. at 599, 612-614.[6] It found, (id. at 599):

> The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public.

The Commission then summarized the reasons for its ultimate finding, Herrin 114 M.C.C. at 599-600:

> Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East, and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicants' proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customers' complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings.

Petitions for reconsideration and other pleadings were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September, 1972, the Commission, Division 1, Acting as an Appellate Division, denied or rejected all the petitions, except the one filed by Jones. At this point, the proceeding except as to Jones became administratively final. Petitions seeking a declaration by the Commission that the proceeding involved an issue of General Transportation Importance were denied by order dated October 6, 1972.[7]

The Complaint was filed in the Court on October 4, 1972, by sixteen plaintiffs. Later, three others were given leave to intervene as plaintiffs. All plaintiffs, except one, Arkansas-Best Freight System, Inc., (A-BF), were protestants to one or more of the applications which were granted. On November 7, 1972,

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5/ The restatement of the supporting evidence, organized geographically appears at Appendix E, Herrin.

6/ None of the unsuccessful applicants is a plaintiff and there is of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, fn. 14, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

7/ At the time this action was filed, the application of Jones Truck Lines, Inc., in Docket No. MC-111231 (Sub-No. 67) had not yet become administratively final. Jones' application was reopened for reconsideration on the present record by order of the Commission, entered September 1, 1972. On reconsideration the application was granted in part and denied in part. Jones Truck Lines, Inc., Extension--Atlanta, Ga., 114 M.C.C. 586 (decided December 6, 1972). The Jones application became administratively final on May 29, 1973, when the Commission denied petitions for reconsideration of its December 6, 1972, decision. Plaintiffs thereupon filed a petition for leave to file a supplemental complaint in this action to include allegations of error by the Commission in authorizing a grant of authority to Jones. This Court denied that motion, with prejudice, on July 24, 1973.

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Judge John E. Miller entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity in Herrin until the completion of judicial review proceedings before the three-judge court.



CONCLUSIONS OF LAW

The Commission's decision herein was issued under Section 207(a) of the Interstate Commerce Act, 49 U.S.C. §307(a), which provides as here pertinent:

> Subject to section 210, a certificate shall be issued to any qualified applicant therefor authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: * * *

The limited scope of review of decisions of the Commission is well settled (see, e.g., Consolo v. Federal Maritime Commission, 383 U.S. 607 (1966); Universal Camera Corp. v. Labor Board, 340 U.S. 474, 488 (1951); United States v. Pierce Auto Freight Lines, 327 U.S. 658, 663 (1926)), and has been recognized by the Courts in this District on a number of occasions. See Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257, 264 (W.D. Ark. 1966); Reddish v. United States, 188 F. Supp. 160 (W.D. Ark. 1960) affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 178 F. Supp. 771, 773-774 (W.D. Ark. 1959). In Patterson v. United States, Judge Miller reviewed those principles at length (178 F. Supp. at 773-774):

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The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. In United States v. Pierce Auto Freight Lines, Inc., 1946, 327 U.S. 515, at page 535, 66 S.Ct. 687, at page 698, 90 L.Ed. 821, the Supreme Court said:

> "We think the court misconceived not only the effects of the Commission's action in these cases but also its own function. It is not true, as the opinion stated, that '*** the courts must in a litigated case, be the arbiters of the paramount public interest'. This is rather the business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law".

He continued:

> The weight to be given by the Court to an administrative finding is well established. In Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S.Ct. 108, 111, 56 L.Ed. 208, the Supreme Court observed that it would "not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling." In Georgia Public Service Commission v. United States, 283 U.S. 765, 775, 51 S.Ct. 619, 623, 75 L.Ed. 1397, the Court said:
>
> > "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the considerations of its conclusions with those reached in similar cases".

In a recent case arising in this circuit, involving a similar order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D.C. D. Minn. 1959, 169 F. Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S.Ct. 140:



> "As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S.Ct. 687, 90 L.Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S.Ct. 589, 87 L.Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D.C. 158 F. Supp. 248; Minneapolis & St. Louis Railway Co. v. United States, D.C. 165 F. Supp. 893."

Judge Miller concluded:

> The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502.

Thus the principal issue in this case is whether the Commission acted within its discretion in concluding that the proposed service, to the extent granted, was required by the present or future public convenience and necessity. For the reasons hereafter stated, we conclude that the decision of the Commission was well within its discretion and should be sustained.

It would serve no useful purpose to repeat the testimony of each of the more than eight hundred and twenty-four supporting witnesses from the Southwest, Middle Atlantic, New England and Midwest States who testified on behalf of the

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applicants.[8/] Their criticism of the performance--or nonperformance--of services by existing carriers is summarized by the Commission, in detail, in its decision (Herrin, Appendix E). It is sufficient to note that there is ample evidence of record showing a need for additional single line service.

Inter alia, the public witnesses testified to the following types of deficiencies in getting goods to market:

(1) The major complaint of the supporting shippers concerned transit time. About 650 shippers testified to this inadequacy and more than 200 introduced transit times studies demonstrating the undependable service.

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8/ The testimony of witnesses who supported only the Roadway application was not considered at all. The testimony of those who supported Floyd and Beasley, alone, was considered, although not specifically discussed by the Commission, nor included within the 824 witnesses listed in Appendix E, Herrin, 114 M.C.C. at 591-92. The breakdown, by Region and States, of the number of witnesses who testified is as follows, id. at 592:

| | | | | | |
|---|---|---|---|---|---|
| Southwest: | Arkansas | 84 | Southeast: | Alabama | 84 |
| | Colorado | 6 | | Florida | 15 |
| | Louisiana | 84 | | Georgia | 114 |
| | New Mexico | 1 | | Kentucky | 1 |
| | Oklahoma | 32 | | Mississippi | 54 |
| | Texas | 375 | | N. Carolina | 25 |
| | | | | S. Carolina | 25 |
| Midwest: | Kansas | 15 | | Tennessee | 17 |
| | Missouri | 27 | | Virginia | 5 |

Middle Atlantic and New England:

| | |
|---|---|
| Connecticut | 4 |
| Delaware | 1 |
| Maryland | 3 |
| Massachusetts | 8 |
| New Hampshire | 1 |
| New Jersey | 9 |
| New York | 5 |
| Pennsylvania | 9 |
| Rhode Island | 4 |



Herrin, 114 M.C.C. at 596.

(2) About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic--particularly small shipments. 114 M.C.C. at 596-97.

(3) Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight. 114 M.C.C. at 597.

(4) Interline problems (which would be reduced by the single line grants authorized herein) were the subject of complaints from 110 shippers. About 200 witnesses described loss, damage, tracing and misrouting incidents, much of which occurred in interline service. 114 M.C.C. at 597.

(5) In addition to predictable adverse effects that inadequate service had upon the shippers--i.e.: loss of discounts or profits--80 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 597-98.

Those facts speak for themselves and, we find, they meet the test of substantial evidence, as that term is used in the Administrative Procedure Act, 5 U.S.C. 706(2)(E), of a need for additional service. We turn now to plaintiffs' argument that the Commission did not apply appropriate standards to the evidence of record.

We preface this discussion by observing that the issues before the Commission were varied and complex and required a de novo application of the Commission's expert

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judgment, experience and knowledge of transportation matters. The issues before the Court are narrower. It is not the function of the Court to weigh the evidence anew or substitute its judgment in place of the Commission. "It is the exclusive province of the Commission to make findings of fact, to draw legitimate inferences therefrom, and to evaluate and determine the weight to be given conflicting evidence." Braswell Motor Freight Lines, Inc. v. United States, supra, 275 F. Supp. at 102. The pervasive feature of plaintiffs' dissatisfaction with the Commission's decision is their disagreement with the evaluation and weight given the evidence.

For example, plaintiffs contend that the Commission applied an improper standard in evaluating the evidence and making evidentiary findings. They call this improper standard a "Monday-Tuesday" rule (i.e., one rule for one party and a different rule for another), which they say was employed by the Commission for the benefit of the successful applicants and to the detriment of plaintiffs. But plaintiffs, in leveling their "Monday-Tuesday" charge at the Commission's evaluation of transit times studies, cite no rule of general application which was denied to them.

Plaintiffs direct their charge primarily at the Commission's evaluation of the evidence concerning transit time studies. "Transit time" refers to the amount of time required to move the goods from origin to destination. Its importance to shippers is obvious, and often has a great bearing on the issue of whether service is in fact adequate to meet their needs. Here transit time studies were introduced both by the applicants and their supporting shippers and by the plaintiffs.



The Commission gave careful consideration to those studies and measured them in comparison to each other. In regard to the transit times studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 596:

> The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7-day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1- and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving.

In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications. Herrin, 114 M.C.C. at 599.

In essence, the Commission found that the transit times studies of the 14 protestants generally relate to short periods of time and were made when protestants were confronted with the possibility of additional competition. Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, this Court concludes that the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419; Braswell Motor Freight Lines, Inc. v. United States, 100 M.C.C. 482, sustained sub nom. Dixie Highway Express,

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Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).[9]

Plaintiffs' further charge that the Commission "ignored" their studies is plainly without merit, since such studies were explicitly discussed by the Commission (Herrin, 114 M.C.C. at 599). In any event, it is well settled that the failure to discuss specific items of evidence is not tantsmount to "ignoring" that evidence. Columbia Transportation Co. v. United States, 167 F. Supp. 1, 15 (E.D. Mich. 1958).

Moreover, the transit times studies was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. Among other inadequacies, the Commission--focusing on the problems of small shipments--found that many of the shippers were confronted with interline difficulties, carrier restrictions or embargoes which limit the service available.[10] These findings are supported by substantial evidence, and afford additional support for the grants of authority here authorized.[11]

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9/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also initially rejected by that Court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

10/ Herrin, 114 M.C.C. at 600.

11/ Plaintiffs also assert that the Commission erred in granting leave to intervene to 41 supporting shippers subsequent to the examiners' report without awaiting plaintiffs' replies. But Rule 72(d) of the Commission's General Rules of Practice, 49 C.F.R. 1100.72, expressly provides:

> In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

And, in any event, plaintiffs have failed to demonstrate how they suffered any harm through the intervention of the supporting shippers, all of whom had testified earlier at the hearings.



Plaintiffs' contention that the Commission erred in refusing to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers is without merit, since the decision reveals that the Commission did consider these matters. The Commission not only made frequent text and footnote references to those changes,[12] and specifically referred to a request made by certain protestants that it take official notice of those changes,[13] it also distinctly said (Herrin, 114 M.C.C. at 576) that it took official notice of those changes which took place since the close of the hearings, including changes affecting carriers not parties to the proceeding. Moreover, the Commission demonstrated its consideration of the changes by limiting the quantum of motor carrier service it authorized to three of the remaining nine applicants in the proceeding. Nothing more was required.

Plaintiffs further complain of the fact that, as a result of the Commission's decision, they will be faced with additional competition. But the Commission could reasonably conclude that the additional competition would be in the public intrest, even though as a result plaintiffs may lose some traffic to their competitors. United States v. Dixie Highway Express, Inc., 389 U.S. 409, 411-12 (1967); Carolina Freight Carrier Corp. v. United States, 297 F. Supp 818, 852 (W.D. N.C. 1969); Atlanta-New Orleans Motor Freight

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12/ Eg., Herrin, 114 M.C.C. at 574, 575, 578, 585, 586, 600, 611, 627, 631, 635, 759, 762, 764, 771, 772, 773, 77, 779, 782, 784, 792.

13/ Id., at 631.

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Co. v. United States, 197 F. Supp. 364 (N.D. Ga. 1961); Arlington, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd per curiam, 340 U.S. 802. As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra, 197 F. Supp. at 370:

> this, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D. Va., 96 F. Supp. 756, 761 affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 94 L.Ed. 590, remarked "Competition among public carriers may be in the public interest and the carrier first in the business has no immunity against future competition [citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity, may be served by the issuance of a certificate to a new competitor."

Plaintiffs also assert error in the Commission's denial of A-BF's petition to reconsider and reopen the Bowman applications. But it is a well settled principle that petitions for reconsideration or reopening are addressed to the sound discretion of the Commission and that the denial of those petitions will be reversed only for clear abuse of discretion. United States v. Pierce Auto Freight Lines, supra; Interstate Commerce Commission v. Jersey City, 322 U.S. 503 (1943). In the latter case Mr. Justice Jackson, speaking for the Court observed:

> [it] has been almost a rule of necessity that rehearings were not matters of right, but were pleas to discretion. And likewise it has been considered that the discretion to be invoked was that of the body making theorder, and not that of a reviewing body.



Summary denial of such a petition is appropriate and further findings and conclusions are unnecessary if it is clear that the Commission gave due consideration to the petition. Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp 894 (D. Col. 1963). Here there is no showing that the Commission abused its discretion in denying A-BF's petition.

The petition to re-open were directed solely to the Bowman service to Montgomery, Alabama. In its decision, the Commission had found that despite Bowman's manifest intent to utilize Montgomery, Alabama, as a gateway, and the showing of public need for that service, Bowman's application was defective in giving notice of such intent. Therefore, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. A-BF and several other carriers who were not parties to the Bowman proceeding[14/] thereupon filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. All such petitions were denied or rejected, but only A-BF, of those who filed such petitions, is a party to this action

Since A-BF holds no authority to serve Montgomery, it is difficult to see how it could have been prejudiced

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14/ A-BF had originally filed a protest to the Bowman application, but voluntarily withdrew its protest near the end of the oral hearing. (Tr. 19, 809, June 15, 1967).

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by the Montgomery grant, and the Commission's denial of its petition was clearly within its discretion. In fact, A-BF's petition reveals that it was not really concerned with the Montgomery grant, but its petition to reopen was bottomed on the contention that A-BF could not have known until republication that Bowman would be able to tack[15/] the rights granted herein to certain operating authorities which Bowman obtained by purchase from Alabama Highway Express in October, 1968.[16/] This contention in turn is based on the theory that Bowman's application, as originally published in the Federal Register in 1965, stating that applicant intends to tack the proposed routes with authority previously granted, amounted in effect to a restriction against tacking with after-acquired rights. But, in view of the Commission's long-established policy not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown (Fox-Smythe Transportation Co. Extension--Oklahoma, 106 M.C.C. 1, 18 (1967), this court is persuaded that the language of the Bowman application cannot reasonably be construed to be a restriction against tacking with after-acquired authorities. Since reasonable notice of the intention to tack with all authorities was given by the original Federal Register publications, A-BF had notice from the beginning of that intention and no need for reopening was shown. Compare Federal Crop Ins. Co. v. Merrill, 332 U.S. 380, 385 (1949); Yakus v. United States, 321 U.S. 414, 425 (1944).

15/"Tacking" means a carriers ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

16/Notice of the filing of this application in Docket No. MC-F-9921, Bowman Transportation, Inc.--Purchase (Portion)--Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. 32 F.R. 15141. There was a republication, showing additional authority be granted, in the Federal Register on June 19, 1968. 33 FR 9051.



Finally, there is no merit to plaintiffs' attack upon the Commission's "re-statement" of the facts found by the examiners. The agency's right to re-state the evidence in form reflecting its pattern of analysis is confirmed by Section 8(a) of the Administrative Procedure Act, 5 U.S.C. §557(b), which provides, as pertinent:

> On appeal from a review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

Plaintiffs' claim that the certain language of Rule 96 of the Commission's Rules of Practice, 49 C.F.R. §1100.96, is a "limitation" on the Commission's powers, within the meaning of the Administrative Procedure Act is of no validity. The pertinent part of Rule 96 provides:

> (a) Generally. Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relief upon to support the exception and a corrected statement must be incorporated.

To begin with, it is well established that the "clearly erroneous" rule of the Federal Rules of Civil Procedure, 52(a), applicable to courts is not applicable to an agency's review of examiners' reports. Universal Camera Corp. v. N.L.R.B., supra; F.C.C. v. Allentown Broadcasting Corp., 349 U.S. 358 (1954). Any departure from that practice, statutorily, let alone by rule, must be explicit. F.C.C. v. Allentown Broadcasting Corp., supra, 349 U.S. at 364.

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Rule 96(a) does not on its face limit the Commission's powers on review and cannot be said to have the degree of "explicitness" required for such limitation. Moreover, the rule which follows in the General Rules of Practice, Rule 97, concerning the "effect of exceptions or absence thereof" establishes that Rule 96 does not relegate the Commission to the role of sustaining those findings in the absence of objection. 17/ Thus Rule 96 is a procedural rule designed to facilitate the development of relevant information for the Commission's use in reviewing initial decisions. As its companion rule (Rule 97) vividly demonstrates, Rule 96 was not intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion. See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532 (1970).

In sum, it is the conclusion of the Court that the decision of the Commission is supported by substantial evidence, and its procedural handling of the case was well written in its discretion.

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17/ Rule 97 (49 CFR 1100.97) provides:

> Rule 97 -- Effect of exceptions or absence thereof.
>
> (a) Upon report and recommended order. The filing of exceptions to a recommended order operates to stay the effectiveness of the order and thereafter decision by the Commission will be made in due course. If no exception is filed to the recommended order and the Commission does not stay it, the recommended order becomes the order of the Commission upon expiration of the period of filing exceptions provided in Rule 96(b), or any postponement of such period, or postponement of the effective date of such order, and a notice stating that the recommended order has, giving the date, become the order of the Commission will be mailed to the parties by the Commission.
>
> (b) Upon proposed report. A proposed report will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertained error the officer's statement of the issues and of the facts ordinarily will be taken by the Commission as the basis of its decision. (emphasis supplied)



Accordingly, the orders of the Commission are affirmed and an order will be entered dismissing the plaintiffs' complaint and dissolving the temporary restraining order previously issued.

United States Circuit Judge

United States District Judge

United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 10th day of August, 1973 I served true copies of the foregoing Joint Proposed Findings of Fact and Conclusions of Law on counsel for all parties of record by first-class, airmail, postage prepaid.

SEYMOUR GLANZER
Attorney



APPENDIX I

CHRONOLOGICAL SEQUENCE OF FILING OF THE APPLICATIONS HEARD ON THE CONSOLIDATED RECORD HEREIN

1. December 7, 1964
Roadway Express, Inc. (Roadway)
No. MC-2202 (Sub-No. 273)

2. March 23, 1965
Johnson Motor Lines, Inc. (Johnson)
No. MC-106401 (Sub-No. 18)

3. May 17, 1965
Red Ball Motor Freight, Inc. (Red Ball)
No. MC-2229 (Sub-No. 132)

4. May 18, 1965
Floyd & Beasley Transfer Company, Inc. (Floyd & Beasley)
No. MC-18088 (Sub-No. 36)

5. May 28, 1965
Deaton, Inc. (Deaton)
No. MC-11207 (Sub-No. 203)

6. June 14, 1965
Jones Truck Lines, Inc. (Jones)
No. MC-111231 (Sub-No. 67)

7. June 16, 1965
Strickland Transportation Co., Inc. (Strickland)
No. MC-59680 (Sub-No. 147)

8. June 18, 1965
Herrin Transportation Company (Herrin)
No. MC-1124 (Sub-No. 206)

9. July 12, 1965
Bowman (Bowman)
No. MC-94201 (Sub-No. 56)

10. July 30, 1965
Baggett Transportation Company (Baggett)
No. MC-76177 (Sub-No. 304)

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APPENDIX II

NUMBER OF PUBLIC WITNESSES WHO TESTIFIED IN SUPPORT OF APPLICATIONS*

| Carrier | Witness Support |
|---|---|
| Herrin | 116 |
| Roadway | 123 |
| Red Ball | 171 |
| Deaton | 58 |
| Floyd & Beasley | 41 |
| Strickland | 134 |
| Baggett | 52 |
| Bowman | 363 |
| Johnson | 256 |
| Jones | 222 |

* Ex. Rept. 4



APPENDIX IV

DISPOSITION OF THE TEN APPLICATIONS NOT SELECTED FOR CONSOLIDATION

| APPLICATION | DISPOSITION |
|---|---|
| Braswell (Sub-No. 17)<br>Red Ball (Sub-No. 131) | Granted<br>112 M.C.C. 558 (1970) |
| Deaton (Sub-No. 232)<br>Cole/Dixie (Sub-No. 96) | Denied<br>106 M.C.C. 792 (1968) |
| Campbell (Sub-No. 106) | Granted with conditions<br>108 M.C.C. 80 (1968) |
| Mercury Freight (Sub-No. 11)<br>Mercury Freight (Sub-No. 12) | Granted 1966 and 1968<br>(Not Printed) |
| Thurston (Sub-No. 54) | Granted<br>105 M.C.C. 586 (1967) |
| Gordons (Sub-No. 94)<br>Dixie Ohio (Sub-No. 62) | Dismissed by<br>Applicants (1966) |

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APPENDIX III

PROFILE OF PLAINTIFFS AND THE APPLICATIONS THEY OPPOSED [1]

| Plaintiffs [2] | PROTESTED APPLICANTS: Red Ball MC-1124 (Sub-No. 132) | Bowman MC-94201 (Sub-No. 54) | Johnson MC-106401 (Sub-No. 16) | OTHER AP [CONT]: Merrin [3] MC-1124 (Sub-No. 200) | Boston MC-1100 (Sub-No. 333) | Strickland MC-94201 (Sub-No. 142) | Aspect MC-45117 (Sub-No. 143) | Jones MC-111231 (Sub-No. 87) | Bloyd & Beasley MC-13668 (Sub-No. 26) | No. |
|---|---|---|---|---|---|---|---|---|---|---|
| Brannon-Bost Freight System, Inc. (A-BF) | | [4] | | | | | | | | |
| Harvey Brown, Inc. (Harvey Motors) | | [4] | | | | | | | | |
| Harvey Brown, Inc. (Allen) | | | | | | | | | | |
| Bowman Motor Freight Lines, Inc. (Bowman) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Bowman Motor Freight Lines, Inc. (Campbell) [5] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Campbell Sixty-Six Express, Inc. (Campbell) [5] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Central Freight Lines, Inc. (Central) | | | | | | | | | | |
| CF & WMC Transportation Company (CF & WMC) | | | | | | | | | | |
| CF & WMC Transportation, Inc. (Eagle) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Coleman Transportation, Inc. (Coleman) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Dallsway Motor Express, Inc. (Dallsway) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Dorsey Freight Lines, Inc. (Dorsey Freight) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Red Arrow Freight Lines, Inc. (Red Arrow) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Ed M.C. Inc. (Ed M.C.) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Transport Line, (Transcom) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Yellow Freight System, Inc. (Yellow) [6] Roadway [6] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Roadway Express, Inc. of Mississippi | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |
| Zero Cole-Blair Highway Company (Zero Cole-Blair) | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] | [4] |

[1] See primary docket for the profile in Merrin, Appendix C, 114 M.C.C. at 793-794.

[2] Wilson Trucking Company was substituted for Merrin. Merrin 114 M.C.C. 571.

[3] In some instances, the protests involved only a portion of the application opposed.

[4] As a result of a protest to Bowman's application which is withdrawn before the close of the oral hearing, No. 19,804, Sub-division 1, dated March 27, 1972 was denied by order of Division 1, dated as an Appellate Division, September 1, 1972.

[5] The operations of United Motor Freight Terminal, Inc. (United) were merged into Campbell, Merrin, 114 M.C.C. at 571. United's protests are treated as Campbell's whether or not the two are duplicative.

[6] Campbell withdrew its protest to Bowman subsequent to the hearing. Merrin 114 M.C.C. at 578.

[7] Watson-Wilson Transportation System, Inc. (Watson-Wilson) was merged into Yellow. Merrin 114 M.C.C. 794. Yellow's interest is derived from Watson-Wilson.

[8] Roadway obtained control of West Brothers, Inc. (West). Merrin 114 M.C.C. at 788. West's protests (except its protest of Roadway) are treated as Roadway's whether or not the two are duplicative.



## APPENDIX G

Proposed Opinion, Findings of Fact and Conclusions of Law submitted by defendants, Red Ball Motor Freight, Inc., Johnson Motor Lines, Inc. and Lorch-Westway Corporation, et al, filed August 13, 1973.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

* * * * *

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL., | : ) | |
| Plaintiffs, | : ) | |
| V. | : ) | |
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, | : ) | |
| Defendants, | : ) | |
| and | : ) | Civil Action No. FS-72-C-65 |
| RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORPORATION, ET AL., | : ) | |
| Intervening Defendants. | ) | |

* * * * *

PROPOSED OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW OF DEFENDANTS RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

In this action commenced October 4, 1972, 18 plaintiffs[1/] seek to set aside and annul orders of the Interstate Commerce Commission (I.C.C.) awarding certificates of public convenience and necessity to three motor carriers, Red Ball Motor Freight, Inc. of Dallas, Tex., Johnson Motor Lines, Inc. of Charlotte, N.C., and Bowman Transportation, Inc. of Birmingham, Ala. The challenged orders were entered by the Commission on December 30, 1971, and September 6, 1972, in a proceeding styled Herrin Transportation Company Extension - Atlanta, Ga., 114 M.C.C. 571 (1971).

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1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., [illegible] Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc., and Jack Cole/Dixie Highway Company. Roadway and Cole/Dixie were permitted to intervene as plaintiffs after the filing of the complaint.

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This court has jurisdiction of the subject matter and of the parties under 49 U.S.C.A. §§ 17(9), 305(g); 28 U.S.C.A. §§ 1336, 1398, 2321, 2325, and 2284.

Plaintiffs are motor carriers which opposed one or more of the successful applications before the Commission.[2] The named defendants are the United States of America and the Interstate Commerce Commission. The three successful applicants, together with 41 shippers (Lorch-Westway Corp., et al.) supporting the Johnson application before the agency, were authorized by the court to intervene as defendants.

On November 7, 1972, following oral argument, Judge John E. Miller entered an order restraining the Commission from implementing the assailed orders pending a hearing and determination of the merits of the action. Arkansas-Best Freight System, Inc., et al. v. United States, et al., 350 F. Supp. 539. The case was submitted for determination by the three-judge court on July 24, 1972, upon the pleadings, the agency record, and the extensive briefs of the parties.[3]

## The Agency Proceeding

The proceeding before the Commission was commenced by the filing of a certificate application by Roadway Express, Inc., on December 7, 1964. Thereafter, during the spring and summer of 1965, 19 other motor carriers filed applications seeking certificates

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2/ Venue plaintiff Arkansas-Best Freight System did not participate in the agency proceeding in opposition to these applications. It participates in this action solely to challenge the Commission's denial of its post decision request to intervene in and rehear the Bowman application. Venue plaintiff Mercury Motors opposed only the Bowman application.

3/ On July 24, 1972, the court, following oral argument, also denied plaintiffs' motion, under F.R.Civ. P. 15(d), to file a supplemental complaint challenging the Commission's final order awarding a certificate in Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586 (1972).





authorizing general commodity operations between points in the southeast and southwest. Pursuant to the Commission's rules of practice, notice of the applications was published in the Federal Register and thereafter they were protested by multiple opposing carriers. As a result of a prehearing conference held on September 9, 1965, ten of the applications were consolidated for hearing and ten were processed separately. The ten applications heard on the consolidated record are identified below; the Commission's disposition of the other ten is noted in the margin:[1]

| Applicant | I.C.C. Docket No. | Date Filed |
|---|---|---|
| Roadway Express, Inc. | MC-2201 (Sub-No. 271) | 12/7/64 |
| Johnson Motor Lines, Inc. | MC-106101 (Sub-No. 13) | 3/29/65 |
| Red Ball Motor Freight, Inc. | MC-2202 (Sub-No. 129) | 5/11/65 |
| Floyd S Beasley Transfer Company, Inc. | MC-17083 (Sub-No. 35) | 5/18/65 |
| Deaton, Inc. | MC-11207 (Sub-No. 233) | 5/20/65 |
| Jones Truck Lines, Inc. | MC-111231 (Sub-No. 67) | 6/14/65 |
| Strickland Transportation Co., Inc. | MC-[illegible] (Sub-No. 147) | 6/15/65 |
| Herrin Transportation Company, Inc. | MC-1124 (Sub-No. 22[illegible]) | 6/16/65 |
| Bowman Transportation, Inc. | MC-94201 (Sub-No. 5[illegible]) | 7/12/65 |
| Baggett Transportation Company | MC-70177 (Sub-No. 20[illegible]) | 7/[illegible]/65 |

The territorial scope of the consolidated applications varied in accordance with the existing authorities of the ten applicants and with the needs of each applicant's supporting shippers. Generally, however, the applicants fell into two categories by area. Four southwestern based applicants, Red Ball, Herrin, Strickland, and Jones, sought to extend their operations to the southeast. Five southeastern-domiciled applicants, Johnson, Bowman, Floyd S Beasley, Deaton, and Baggett, sought to obtain authority to the southwest.[2]

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1/ Four of the separately processed applications were granted in Braswell Motor Freight Lines, Inc., Extension - Between Houston, Tex., and New Orleans, La., 112 M.C.C. 553 (1970); Campbell Sixty-Six Express, Inc., Extension - Atlanta, 108 M.C.C. 80 (1969); and Thurston Motor Lines, Inc. - Charlotte Gateway, 100 M.C.C. 630 (1967). The applications of Pearson Freight were granted in 1966 and 1967 as designated deviations. The applications of Dixie and Deaton were denied in West Brothers, Inc., Extension - Baton Rouge, La., 100 M.C.C. 703 (1968). The applications of Johnson and Dixie were denied in 1966.

2/ Roadway's original application was somewhat different in that it already operated in both the southeast and southwest, but sought to extend its operations from Montgomery, Ala., to Baton Rouge, La., via Pensacola, Fla., and New Orleans, La.

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The Commission assigned two hearing examiners (now administrative law judges) to the consolidated proceeding. Hearings were held at eight cities, intermittently, over a period of about 18 months extending from March 1966 to August 1967. Nine-hundred and fifty witnesses testified on behalf of the applicants. Of that number, 933 public witnesses, shippers, and receivers gave evidence in support of one or more of the applications. Evidence in support of 48 active protestants was offered by 62 witnesses. 6/

Simultaneous post-hearing briefs, including abstracts of the evidence, were filed by the parties. On November 19, 1969, the examiners served their report and recommended order finding all of the applicants "capable of performing the operations proposed," but recommending denial of all applications. Exceptions to the examiners' report were filed by eight applicants, including Johnson, Bowman, and Red Ball, and by 41 shippers, Lorch-Westway, et al., who were permitted to intervene in support of the Johnson application. Replies to those exceptions were filed by the protestants. On or about August 1, 1970, the case was submitted for the decision of the Commission, Division 1.

In a 225-page unanimous decision and order entered December 30, 1971, the Commission, Division 1, concluded that the applications of Red Ball, Johnson, and Bowman should be granted. It found:

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."
> 114 M.C.C. at 599.

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6/ The agency record, described by the Commission as perhaps the most extensive ever developed in a case of this kind, consists of 1,989 exhibits, many several hundred pages in length, and a hearing transcript numbering 23,423 pages.





It then summarized the reasons for its ultimate finding:

> "Most of the supporting witnesses justifiably express dissatisfaction with the transit times and the inconsistency of the elapsed time between pickup and delivery on traffic moving (1) between the East and Southeast, on the one hand, and, on the other, the Southwest, (2) between the Midwest, on the one hand, and, on the other, the East and Southeast, and (3) between points in the East and Southeast, on the one hand, and, on the other, points in Mississippi. Studies introduced by many of the supporting witnesses show that the motor movement of much of their pertinent traffic has transit times of at least 1 day more than applicant's proposals. Admittedly, some of these exhibits cover only a limited number of those shipments transported between relevant points during the study period. It also appears that some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic. These infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings." 114 M.C.C. at 599-600.

Petitions for reconsideration and other pleadings seeking changes in the December 30, 1971, decision were filed by protestants and unsuccessful applicants, followed by reply pleadings. By order of September 6, 1972, the Commission's Division 1, acting as an Appellate Division, denied or rejected all petitions relevant to the Johnson, Bowman, and Red Ball cases, and these three certificate awards became administratively final and ripe for judicial review.

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On September 21, 1972, protestants then filed petitions under I.C.C. General Practice Rule 101(a)(4) requesting the Commission to rule and announce that the proceeding involved an issue of general transportation importance. These petitions, somewhat similar in nature to a litigant's request for rehearing en banc, were denied by the entire Commission by a vote of 6 - 3.

Issues Before This Court

We read plaintiffs' pleadings to contain four broad challenges to the Commission's decision:

(1) Whether the Commission properly decided the case differently than recommended by the hearing examiners.

(2) Whether the Commission's decision granting the certificates is supported by substantial evidence.

(3) Whether the Commission acted arbitrarily and capriciously in the weight it accorded certain evidence.

(4) Whether plaintiffs, or any of them, were denied due process.

Scope of Judicial Review

The Commission decision is before the court under well-established principles of a limited scope of review. That decision will be sustained if it is within the agency's statutory powers and is based on appropriate findings which, in turn, are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 619-621 (1966);





Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, [illegible] (1951); United States v. Pierce Auto Freight Lines, Inc., 327 U.S. 515, 535-536 (1946). In Consolo, supra, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." 383 U.S. at 620.

When the Commission's decision is supported by substantial evidence on the record, that decision must be affirmed even though this court might reach a different conclusion if it were hearing the case de novo as a civil proceeding. Thus, in Texas Mexican Ry. Co. v. United States, 250 F. Supp. 946 (S.D. Tex. 1966), a three-judge court review of an I.C.C. decision, the court stated this rule:

> "The conclusion of the Commission finds support in the record as a whole, even though we might justifiably have made a different choice had the matter been before us de novo; and, therefore, this Court may not set the order aside."
> 250 F. Supp. at 950.

This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (W.D. Ark. 1966); Reddish v. United States, 189 F. Supp. 160 (W.D. Ark. 1960), aff'd sub nom., Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81 (1961); Patterson v. United States, 178 F. Supp. 771 (W.D. Ark. 1959). In Patterson, Judge Miller held:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence. [Citations omitted.]
>
> * * *
>
> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its actions.' [Citations omitted.]
>
> * * *

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> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."
> 178 F. Supp. at 773-774.

In defining substantial evidence in Superior Trucking Company, Inc. v. United States, 306 F. Supp. 872 (N.D. Ga. 1969), the court said:

> "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. . . . Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L. Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence *** must do more than create a suspicion of the existence of the fact to be established. *** [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S. Ct. 501, 505, 83 L.Ed. 660 (1939)."
> 306 F. Supp. at 875.

In Curtis, Inc. v. United States, 327 F. Supp. 291 (D. Col. 1971), the court explained what does not render evidence insubstantial:

> "A review of the extensive record in this case does indeed reveal that the Commission had before it substantial evidence upon which to predicate its actions. Plaintiff attempts to refute the findings of the Hearing Examiner (subsequently adopted by the Commission) witness by witness (and there were over 60 witnesses). However, in almost every instance these attempts amount to efforts to equate controverted or disputed evidence on behalf of the applicants before the Commission with insubstantial evidence. This cannot be done."
> 327 F. Supp. at 294. (Emphasis added.)

This limited scope of review is particularly appropriate when, as here, plaintiffs are attacking the exercise of the Commission's authority in the specific area of public convenience and necessity. The scope of the certificates which should be granted entails not only a weighing of the evidence but the exercise of an expert judgment on the intricacies of the transportation problems which are involved. United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 478-480 (1942). Compare Andrew G. Nelson, Inc. v. United States, 355 U.S. 554,





558 (1958); United States v. Baker, 307 U.S. 143, 154 (1939). See also, Atlanta-New Orleans Freight Co. v. United States, 155 F. Supp. 68 (N.D. Ga. 1953), where the court made reference to the applicable standards in the following language:

> "In cases such as this 'the Commission, through the application of its expert judgment and experience in, and knowledge of, interstate transportation matters, is the final arbiter upon whether or not additional motor carrier service is required. Public transportation is not something that can belong to an applicant. It is established and determined by proof of conditions which exist in the territory to be served.' Wales v. United States, 108 F. Supp. 928, at page 933."
> 155 F. Supp. at 74.

Accord: Illinois Central R.R. Co. v. Norfolk & W. Ry. Co., 385 U.S. 57, 66 (1966); United States v. Pierce Auto Freight Lines, 327 U.S. 515, 535-536 (1946); Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945); United States v. Detroit & Cleveland Navigation Co., 326 U.S. 236, 241 (1945).

In short, there is a presumption that an administrative agency has properly performed its official duties in the absence of clear evidence to the contrary. Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968); Interstate Commerce Commission v. City of Jersey City, 322 U.S. 503, 512-513 (1944). The judicial function is exhausted when there is found to be a rational basis for the action taken by the agency. Mississippi Valley Barge Line Co. v. United States, 292 U.S. 282, 286-287 (1934).

### Did the Commission Properly Decide the Case Differently Than Recommended by the Hearing Examiners?

In a report containing 38 pages of text and 275 pages of appendices, the hearing examiners concluded that all of the applications should be denied. In its decision of December 30, 1971, the Commission considered "[T]he evidence, the recommendations of the hearing examiners, and the pleadings" [114 M.C.C. at 575] and stated that "[o]ur conclusions differ in three of the embraced proceedings from those recommended by the

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examiners." 114 M.C.C. at 574. As this court has stated, the Commission has the right, indeed duty, to make its own decision and in so doing to be free to accept or reject the recommendations of its examiners.

The hearing before the examiners was conducted as a contested proceeding on the record pursuant to 49 U.S.C. §§ 305(c), (e), and (g). Minneapolis & St. L. Ry. v. United States, 361 U.S. 173, 192 (1959). The report of the examiners was solely an initial decision pursuant to 5 U.S.C. §§ 556 and 557. Under this statute, "[t]he Commission is not bound by the findings of the hearing officers and is free to reach conclusions upon the evidence contrary to those of its examiners." Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 554.

The relationship between the examiners and the Commission is not the same relationship which exists between the Commission and this court. The Commission exercises all of the authority conferred upon it by statute. It can properly substitute its own judgment for the judgment of the examiner and itself reach an initial decision. ". . . On appeal from or review of the initial decision [of the hearing examiner], the agency has all the powers which it would have in making the initial decision. . . ." 5 U.S.C § 557(b). "The Commission is not bound by the examiner's conclusions. Rather, the Commission is free to make its own independent determinations." Frozen Food Express, Inc. v. United States, 301 F. Supp. 1322, 1324 (N.D. Tex. 1969); see Arkansas-Best Freight System, Inc. v. United States, supra, 350 F. Supp. at 544.

In Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 493 (1951), the Supreme Court established the rule that the examiner's decision is only part of the whole record which the court must review to determine if there is substantial evidence to support the Commission's decision. This holding was further explained in Federal Communications Commission v. Allentown Broadcasting Corp., 349 U.S. 358 (1955).





In that case the Supreme Court reversed a Court of Appeals decision which held that an examiner's findings could not be overruled by the agency unless there was a "'very substantial preponderance in the testimony as recorded.'" 349 U.S. at 360. The Supreme Court held that the F.C.C. could not be limited to the "clearly erroneous" rule embodied in Rule 52(a), Fed. R. Civ. P., when reversing decisions of the hearing examiner. The statute gives to the Commission, not to the examiner, the power to rule on the facts and the law. Therefore, the relevant inquiry for the courts is whether there is substantial evidence on the record as a whole to support the Commission's decision. 349 U.S. at 364-365.

In Lorain Journal Co. v. Federal Communications Commission, 351 F. 2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966), the petitioners complained that the F.C.C., in reversing the hearing examiner's findings, did not give sufficient weight to the examiner's decision. The court stated:

> "But their [examiners'] authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364, 75 S. Ct. 855, 99 L.Ed. 1147 (1955). The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance." 351 F. 2d at 828. (Emphasis added.)

Thus, the court held that it must sustain the Commission's decision if supported by substantial evidence, even though there was substantial evidence to support the examiner's decision. 351 F. 2d at 828.

Plaintiffs contend, however, that in this case the Commission was procedurally bound by the examiners' summary of the testimony of the public witnesses and their conclusions respecting that evidence because the exceptions filed by the applicants had failed to pinpoint defects in the examiners' summary. This contention is devoid of substance.

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Appendix C of the examiners' report contained their summary of the testimony of the public witnesses. This summary was organized by the commodities shipped or received. The Commission did not adopt the examiners' Appendix C. Rather, it said:

> "The examiners grouped the supporting witnesses' evidence according to the commodities shipped. Certain of the applicants contend that, handled in this manner, the supporting evidence did not receive adequate consideration and treatment in relation to the territories and points involved. We believe that a clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, can be presented by a grouping of the supporting evidence on a geographic basis. We have accordingly restated the supporting evidence in appendix E to this report." 114 M.C.C. at 591.

Appendix E of the Commission's decision contained its own independent statement of the testimony of the public witnesses organized geographically by states. The testimony of 824 [1] witnesses was classified in Appendix E under five major headings: (1) Shipper location and commodities; (2) origins, destinations, volume, type, and frequency of traffic; (3) existing service utilized; (4) reasons for supporting applications; and (5) applications supported and remarks. This summary of evidence in Appendix E must then be read in conjunction with the Commission's discussion of that evidence at pages 591-598 of the report, under the heading "Supporting Evidence." It was by means of the Appendix E summary and the discussion at pages 591-598 that the Commission enters the "basic or essential findings" to support its ultimate conclusion that there is a public need for additional motor carrier service.

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1/ "Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest, [footnote: "Specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 274 in Texas."]; 340 shippers in the Southeast, 44, collectively, in the Middle Atlantic and New England States; and 42 in the Midwest." 114 M.C.C. at 592.





In view of the large number of public witnesses and the high value of their evidence, we do not quarrel with the agency's organization of this material. Nor do we accept plaintiffs' contention that the Commission was prohibited by applicants' pleadings from doing what it did.

The exceptions to the examiners' report filed by applicants and Lorch-Westway, together with the replies thereto filed by the protestants-plaintiffs, are summarized in Appendix D to the Commission's report. 114 M.C.C. at 624-635. These pleadings are also discussed in the text of the decision. 114 M.C.C. at 574-579. These discussions by the Commission together with the court's independent perusal of the pleadings are persuasive that the applicants' exceptions and the replies thereto raised substantial issues respecting the accuracy and completeness of the examiners' summary of the public witness testimony and fully justified the Commission's restatement of it.

## Is the Commission's Decision Supported by Substantial Evidence?

The Commission's decision granting the applications of Johnson, Bowman, and Red Ball is supported by substantial evidence. We recognize the deference accorded to Commission determinations of public convenience and necessity and explained our limited function in reviewing this decision. It is with these standards in mind that we here examine the Commission's findings and the evidence underlying them.

The Commission's approval of the three applications turned fundamentally upon three correlative findings. It found that the record as a whole showed widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the southwest and the southeast, eastern seaboard, and gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature. It also found that the available transportation service between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public. Finally, it found the evidence,

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considered in its entirety, was convincing that the additional services of three of the applicants ". . . will serve a useful public purpose, responsive to a public demand and need." 114 M.C.C. at 599-602. These findings were premised on a number of interrelated subsidiary findings respecting public dissatisfaction with the existing transport system and the pressing public demand and need for the services proposed by the successful applicants.

The major problem facing the public witnesses was the excessive and erratic transit times experienced between pickup and delivery of their traffic. About 650 shippers testified to this inadequacy. More than 200 evidenced transit time studies demonstrating the undependable service.

About 70 shippers complained of service restrictions or embargoes on traffic and outright refusals to handle traffic -- particularly small shipments. Evidence was given by approximately 150 shippers who experienced difficulty due to failure of existing carriers to make timely pickups or deliveries of freight.

Interline problems (which would be reduced by the single line grants authorized by the Commission) were the subject of complaints from 110 shippers. About 200 witnesses criticized loss, damage, tracing, and misrouting incidents, much of which occurred in interline service.

In addition to predictable adverse effects that inadequate service had upon the shippers -- i.e., loss of discounts or profits -- 60 witnesses testified that they had lost business and customers due to motor carrier problems. 114 M.C.C. at 596-598. The Commission therefore properly found that the supporting witnesses have shown a valid public need to additional motor carrier service. 114 M.C.C. at 600.

The Commission also found that the granting of all of the applications would be contrary to the public interest; that a compelling public demand and need exists for the services proposed by three applicants; and that the gains to be derived by the public from these three authorizations ". . . far outweigh any adverse effect . . . any protestant may experience." 114 M.C.C. at 601-602, 611. Plaintiffs challenge these





findings by reference to the examiners' findings that granting the ten applications would have a serious adverse effect upon the existing carrier service (Examiners Report, p. 20). But there is no valid comparison between the examiners' "impact" findings and those of the agency. The examiners lumped the effects on existing carriers of the granting of all ten applications in reaching their conclusion as to possible adverse effect, without making any analysis whatever of the impact, if any, of the granting of any individual application. The Commission, on the other hand, balanced the gains to the public against possible detriment to protestants from the granting of three applications. It found the scale to dip decidedly in favor of the public, notwithstanding the awards "will subject some of protestants' traffic to the possibility of diversion." 114 M.C.C. at 610-611.

Contrary to plaintiffs' view, the protection of existing carriers is not the overriding purpose of motor carrier regulation. Rather, the federal regulations attempt to develop, coordinate, and preserve a national transportation system adequate to meet the commercial needs of the country. (See "National Transportation Policy," 49 U.S.C. preceding § 1.) While protection of existing carriers is a consideration, that factor does not ipso facto bar the Commission from allowing new competition into the field. Petroleum Carriers Corporation v. United States, 258 F. Supp. 611, 615-616 (M.D. Fla. 1966).

The fact that plaintiffs will now have additional competitors is no reason to deny authority. As the Supreme Court stated in United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967):

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is

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> of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v Drum, 368 US 370, 374, 7 L ed 2d 360, 363, 82 S Ct 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v Parker, 326 US 60, 70, 89 L ed 2051, 2062, 65 S Ct 1490 (1945); see Schaffer Transportation Co. v. United States, 355 US 83, 90-91, 2 L Ed 2d 117, 122, 123, 78 S Ct 173 (1957)." 389 U.S. at 411-412.

In a further decision in Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. N.Y. 1968), the court, per curiam, said:

> "But criticism of such treatment of said franchises did not properly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. [Footnote omitted.] A sound discretion in the exercise of a highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision. . . . There are numerous and very complex and complicated problems which must be considered and weighed and balanced against each other and decided for a proper determination by this administrative agency as to the existence vel non of any public need or necessity for a franchise to serve public transportation needs and requirements." 287 F. Supp. at 474-475.

To be sure, the Commission found that some plaintiffs may be disadvantaged and may lose some traffic as a result of these awards. 114 M.C.C. at 610-611. But having found the existing services wholly inadequate for the public's needs, the Commission then reasonably concluded that the additional competition offered would be in the public interest. The courts have long recognized a discretion in the Commission to find that additional competition would serve the public convenience and necessity. Chesapeake & O. Ry. Co. v. United States, 283 U.S. 35, 43 (1931); Superior Trucking Co. v. United States, supra, 106 F. Supp. at





876-877; Carolina Freight Carriers Corp. v. United States, 297 F. Supp. 848, 852 (W.D. N.C. 1969); Atlanta-New Orleans Motor Freight Co. v. United States, 197 F. Supp. 364, 369-370 (N.D. Ga. 1961); Alexandria, Barcroft & Washington Tr. Co. v. United States, 103 F. Supp. 607, 609 (E.D. Va. 1951); Capital Transit Co. v. United States, 97 F. Supp. 614, 620 (D. D.C. 1951); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 761 (E.D. Va. 1950), aff'd, 340 U.S. 802 (1950); Lacy Transp. Corporation v. United States, 75 F. Supp. 915, 931 (S.D. Cal. 1948); A. B. & C. Motor Transp. Co. v. United States, 69 F. Supp. 166, 169 (D. Mass. 1946); Davidson Transfer & Storage Co. v. United States, 42 F. Supp. 215, 219 (E.D. Pa. 1942), aff'd, 317 U.S. 587 (1942). As the court emphasized in Atlanta-New Orleans Motor Freight Co. v. United States, supra:

> "[T]his, in itself, has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. As the Court in Norfolk Southern Bus Corp. v. United States, D.C.E.D.Va., 96 F.Supp. 756, 761, affirmed mem., 340 U.S. 802, 71 S.Ct. 68, 95 L.Ed. 590, remarked:
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> > 'Competition among public carriers may be in the public interest and the carrier first in business has no immunity against future competition. [Citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity may be served by the issuance of a certificate to a new competitor.'"
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> 197 F. Supp. at 370.

**Did the Commission Act Arbitrarily and Capriciously in the Weight It Accorded Evidence by Different Parties?**

The issues before the Commission were varied and complex and required a de novo application of the Commission's expert judgment, experience, and knowledge of transportation matters. The issues before this court are narrower. It is not our function to weigh the evidence anew or substitute our judgment for that of the Commission. "[I]t is the exclusive province of the Commission to make findings of fact, to draw

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legitimate inferences therefrom, and as to the weight to be given conflicting evidence. Branscell Motor Freight Lines, Inc. v. United States, 275 F. Supp. 98, 102 (W.D. Tex. 1967), aff'd, 389 U.S. 569 (1968), reh. den. 390 U.S. 975 (1968). The pervasive feature of plaintiffs' challenge to the Commission's decision is their disagreement with the evaluation and weight accorded evidence.

To lend color to these arguments plaintiffs first accuse the Commission of violating a so-called "Monday-Tuesday" principle stated in the concurring opinion of Judge Brown in Mary Carter Paint Co. v. Federal Trade Commission, 333 F. 2d 654, 660) (5th Cir. 1964), rev'd, Federal Trade Commission v. Mary Carter Paint Co., 382 U.S. 46 (1965). In their reply brief plaintiffs shifted the pivot of this challenge to accusations that the Commission acted arbitrarily and capriciously and therefore without a rational basis in evaluating and weighing the evidence. At the heart of these accusations is plaintiffs' belief that they were treated unfairly by the Commission and that this unfair treatment is manifested in the way the Commission evaluated their evidence vis-a-vis the weight it accorded the evidence of the public witnesses and the witnesses of the applicants.

Plaintiffs' arguments misconstrue the Commission's statutory function and duty in passing upon applications for certificates of public convenience and necessity. Their assertions are grounded on the faulty premise that the Commission's function is to view its proceeding as an economic struggle between the applicants and the protestants. But the Commission's order under review by this court decided that the present or future public convenience and necessity required the three authorizations and that, as the examiners also had held (Report, p.3), the successful applicants were fit, willing, and able to conduct the service shown to be needed by the public. In short, the primary consideration before the agency was the interest of the public, not the relative economic advantages of the applicants and the protestants. Central Motor Lines, Inc. v. United States, 209 F. Supp. 194, 210 (D.D. N.C. 1962).





The function of weighing the evidence and drawing legitimate inferences therefrom is peculiarly within the Commission's discretionary powers. Consolo v. Federal Maritime Commission, supra; Alabama Highway Express, Inc. v. United States, 241 F. Supp. 290 (M.D. Ala. 1965), aff'd. 382 U.S. 106 (1965). The regulation of transportation involves various economic factors and the exercise of an empirical judgment since "The stuff of the problem is fluid and changing - the resultant of factors that must be valued as well as weighed." Virginia Stage Lines v. United States, 48 F. Supp. 79, 83 (W.D. Va. 1942). The Commission's determination of the weight to be accorded evidence, so long as the basic facts find support in the record as a whole, will not be reversed on appeal "'even though the court would justifiably have made a different choice had the matter been before it de novo.'" C & H Transportation Co. v. United States, 249 F. Supp. 97, 98 (N.D. Tex. 1965). Finally, the Commission's decision contained all requisite "basic and essential" findings to support its ultimate conclusion that the public convenience and necessity requires the granting of three of the ten applications. The agency need do no more. As a three-judge district court stated in Columbia Transportation Co. v. United States, 167 F. Supp. 5 (E.D. Mich. 1958):

> "Plaintiffs assert that the Commission's Order ignored evidence offered by them, and recite evidence which they claim the Commission ignored. The fact that the Commission did not in its report discuss various portions of testimony offered by plaintiffs, and give its reasons why it did not accept such evidence as controlling its decision, does not, in our opinion, constitute ignoring that evidence. Inasmuch as the Commission's report contained ultimate facts which it found from the record, it cannot be said that the Commission ignored any evidence that was before it. Failure to give to evidence the weight claimed for it by a party does not amount to ignoring such evidence." 167 F. Supp. at 15.

These legal principles are dispositive of the bulk of plaintiffs' complaint to this court. The same also is true of certain important areas of evidence.

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Transit Studies of
Shippers v. Plaintiffs

Approximately 650 shipper witnesses complained about inconsistent and excessive transit times experienced in their employment of the existing carriers. About 200 of these witnesses corroborated these complaints with studies of shipping documents showing the actual number of days their goods were in transit. In an effort to show the shippers' oral and documented complaints to be unjustified, 14 of the 46 protestants submitted studies of the transit times experienced on their own lines during specified time periods in 1966 and 1967, subsequent to the filing of the applications.

As noted in T.S.C. Motor Freight, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960) aff'd sub nom., 366 U.S. 419 (1961), transit time studies are the conventional type of evidence usually submitted to the Commission in proceedings of this kind and call for ". . . the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision." 181 F. Supp. at 791. The agency decision now before this court made abundantly clear that the Commission carefully weighed and balanced this conflicting evidence. It found the 200 public witness studies, taken collectively, to be ". ... representative of the service these shippers are and have been receiving." 114 M.C.C. at 596. It further found that the 14 protestants' studies, although demonstrating in certain instances expeditious service, not to present ". . . as valid a picture as those introduced by those witnesses supporting the applications." 114 M.C.C. at 599.

Substantial evidence of record supported the Commission's findings. We do not substitute our judgment for the Commission's exercise of informed reasoning on an evidentiary problem committed to its discretion. Indeed, in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, 491-498 (1966), a case participated in by many of the plaintiffs here, the Commission resolved the same evidentiary problem much the same way. In these circumstances we cannot agree with





plaintiffs that the Commission's resolution of this evidentiary problem here was arbitrary or capricious. Indeed, however paramount this transit time evidentiary problem was to plaintiffs, it was only one of the factors considered by the Commission in determining the public convenience and necessity. The Commission found that the record "considered as a whole" showed that shippers were not receiving reasonably adequate service. As we have previously stated, this finding was supported by substantial evidence of a wide variety of defects in the services of existing carriers, not the least of which involved ". . . embargoes which limit the service available or . . . outright refusals to handle . . . traffic." 114 M.C.C. at 600.

Official Notice of
Subsequent Events

At plaintiffs' request, the Commission officially noticed in excess of 30 changes which, during the course of this agency proceeding, had taken place in carrier operating authorities in the involved regions by reason of I.C.C. approvals of other certificate applications and consolidations and mergers. Some of these changes resulted from applications filed and processed by plaintiffs themselves during a period when they were fully aware of the pendency of this case and of the possibility that one or more of these applications would be granted.

It is not unusual in a lengthy administrative proceeding of this kind that changes occur in the transport system during the course of the case. In the sound exercise of its discretionary power, the Commission noticed these changes and gave them "full and careful consideration" in its determination. 114 M.C.C. at 570. Since the Commission is empowered to find a further need for service by the public without a specific finding of inadequate service by the existing transportation system and because plaintiffs have in no way shown that the Commission exceeded its discretion in doing what they asked it to do, we cannot say the agency acted arbitrarily or capriciously. [illegible] Motor Express, Inc. v. United States, 207 F. Supp. [illegible] (S.D. Tex., 1962); Interstate Commerce Commission v. City of Jersey City, supra, 322 U.S. at 512-513.

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Ability of Applicants

Plaintiffs contend that the Commission irrationally accorded too much weight to evidence of inadequate service by protestants and too little to some defects in the operations of the applicants. Shipper complaints regarding the services of these defendants are de minimus when weighed against the overwhelming public support for their proposed single line service. Moreover, these complaints were directed to defendants' joint line transportation -- a problem cured by the single line carriage approved by the Commission.

When, as here, there is substantial evidence on the record as a whole of a public demand and need for granting the applications, a certificate award should not be withheld simply because protestants, acting in their own self-interest, point to a few flaws in the operations of the applicants. To do so would simply exasperate the plight of the shippers by maintaining the existing inadequate transport system in status quo while the protestants enjoy freedom from competition. Hence, the Commission has historically considered the public's need for improved transportation as a consideration overriding flaws in the operations of applicants. Cf. Garrison Contract Carrier Application, 53 M.C.C. 195 (1951); Garrison Fast Freight, Inc., Common Carrier Application, 67 M.C.C. 550 (1956); Antrim Thompson Contract Carrier Application, 53 M.C.C. 195 (1951); and Western Auto Transports, Inc., Extension - Trucks, 81 M.C.C. 71 (1959). More recently, in Spector Freight System, Inc., Extension, 111 M.C.C. 889 (1970), the needed certificate was granted notwithstanding the applicant's failure to render reasonably adequate and continuous service during certain past intervals. 111 M.C.C. at 892. Indeed, plaintiff Campbell was the recipient of a certificate despite abuse of its common carrier duty to serve [108 M.C.C. 80, 81-82 (1968)]. Protestant East Texas was granted new operating authority notwithstanding repeated and serious failures to accept shipments required to be transported by its existing certificate. East Texas Motor Freight Lines, Inc., Extension - Mississippi and Louisiana Points, 115 M.C.C. 122 (1972).





Of course, if the applicant's past conduct is of such a flagrantly unlawful character as to render it unfit to perform the proposed service, the Commission, weighing the needs of the public against the unfit operations, can and will deny the application. Cf. Joseph P. Trioli Extension - Brick, 53 M.C.C. 212 (1951), [knowing, willful, and unlawful operations over extended time period]; Barrett Common Carrier Application, 79 M.C.C. 753 (1959), [falsification of records to evade detection of unlawful operations]; and W. J. Dilling Transfer Co. Extension - Alloys, 91 M.C.C. 667 (1962), [noncompliance with an outstanding cease and desist order]. There is no evidence before the court upon which it can find the Commission erred in concluding these applicants are unfit to receive these awards. Indeed, plaintiffs neither urged such a finding before the Commission nor here suggested any agency error in concluding that Johnson, Bowman, and Red Ball are "financially and otherwise fit . . . properly to conduct the proposed services." 114 M.C.C. at 591.

Finally, plaintiffs argue that the agency paid too little heed to their claim that the applicants will not prospectively perform the expedited transport service proposed in their applications. This is a claim often pressed by protestants to certificate applications. Its resolution obviously calls for the exercise of experienced and expert agency judgment. Here, both the examiners and the Commission rejected plaintiffs' claim. The examiners specifically found the applicants to be ". . . capable of performing the operations proposed" (Report, p.13). The agency considered the question at length and found the challenge to be without merit. 114 M.C.C. at 611.

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Was There a Denial of Due Process?

Intervening Shippers

Plaintiffs claim to have been denied due process when post-hearing leave to intervene was granted by the Commission to 41 shippers supporting the Johnson application. The petition for intervention by Lorch-Westway Corp. and 40 other shippers was filed with the Commission pursuant to Rule 72 of its General Rules of Practice on March 23, 1970, one day prior to the due date for filing exceptions to the hearing examiners' report. Attached to the petition for intervention were shippers' exceptions to that report. Pursuant to Rule 72(d),[8/] any reply in opposition "must be filed within twenty days," although the Commission, in its discretion, may grant or deny the motion before the 20 days have expired.

Pursuant to Rule 72(d), the Commission granted leave to intervene seven days after service of the petition. Shippers' exceptions which were filed with the petition were accepted nunc pro tunc and as timely filed.

Plaintiffs disputed the grant of intervention in a petition for reconsideration of that order, filed April 13, 1970, and again in their petition for reconsideration of the Division 1 decision, filed May 22, 1972. Opportunity to be heard on the intervention issue was afforded plaintiffs a third time in their reply briefs to the exceptions filed by the intervening shippers. These opportunities constitute due process. Inland Empire District Council v. Mills, 325 U.S. 697, 709-710 (1945).

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8/ I.C.C. General Rules of Practice, Rule 72. 49 C.F.R. § 1100.72 (Supp. 1972). Intervention; petitions. "(d) Copies; service; replies. . . . Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies." (Emphasis added.)





The interest of these shippers in the Commission proceedings and in their review by this court cannot seriously be challenged under 28 U.S.C. § 2323 and Fed. Rules Civ. P. 24(a). Salem Transportation Co. v. United States, 43 F.R.D. 309, 310 (S.D. N.Y. 1967); United Transports, Inc. v. United States, 214 F. Supp. 34, 38 (W.D. Okla. 1962); see Brotherhood of R.R. Trainmen v. B. & O. R.R. Co., 331 U.S. 519, 530-531 (1947); Alexander Sprunt and Son v. United States, 281 U.S. 249, 255 (1930). Applicability of the antitrust laws to the administrative proceeding below, raised by one of several exceptions to the hearing examiners' report by the intervening shippers, was found unnecessary for consideration in reaching its decision by the Commission. 114 M.C.C. at 576-577. The issue was not raised as a substantive matter before this court. Moreover, many of the arguments of the intervening shippers, challenged by plaintiffs, were contained in supplemental exceptions rejected by the Commission. 114 M.C.C. at 577. In these circumstances it is difficult to conceive how plaintiffs were prejudiced by the shippers' participation in the Commission proceeding.

Denial of ABF's Petition to Reopen the Bowman Case

Arkansas-Best Freight System (ABF) urges that it was denied due process when the Commission rejected its post-decision petition to intervene in and to reconsider and reopen the Bowman application. The record shows that ABF protested the applications of Roadway and Bowman at the outset of these consolidated proceedings. However, at the time the case was decided by the Commission on December 30, 1971, ABF was no longer a party to the proceeding before the Commission. This resulted from the voluntary withdrawal of its protest to the Bowman application toward the end of the oral hearing, and the final denial of the Roadway application on March 24, 1970.

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In its decision the Commission found that, despite Bowman's manifest intent to utilize Montgomery, Ala., as a gateway and the showing of public need for that service, Bowman's application was technically defective in giving notice of such intent. Therefore, pursuant to its normal practice in situations of this type, the Commission ordered that the application be republished in the Federal Register to remedy the defect and to permit anyone prejudiced by the additional authority to serve Montgomery to seek leave to intervene. 114 M.C.C. at 611-612.'

In response to that republication, ABF and several other carriers who were not parties to the proceeding filed petitions, generally, seeking leave to intervene, and reopening and reconsideration of the Bowman application. ABF's petition sought each of those. All such petitions were denied or rejected.[9/] Only ABF, of those who filed such petitions, is a party to this action.

ABF cannot serve Montgomery. Therefore, it was not prejudiced by the grant to Bowman to serve Montgomery, and it had no standing in conflict with the matter necessitating republication. Nevertheless, it urges that the Commission erred in failing to reconsider the Bowman application in the light of facts other than those related to Montgomery. The argument is bottomed on the belief that ABF could not have known until republication that Bowman would be able to tack[10/] the rights granted herein to operating authorities acquired by applicant through purchase from Alabama Highway Express in October 1968.[11/]

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9/ Order of the Commission, Division 1, acting as an Appellate Division, dated September 1, 1972, page 6.

10/ "Tacking" means a carrier's ability to join two or more grants of authority by the I.C.C. to provide service between points in one territorial grant and points in another territorial grant or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F. Supp. 1295, 1298 (M.D. Pa. 1972).

11/ Notice of the filing of this application in Docket No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc., was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority to be granted, in the Federal Register on June 19, 1968.





Bowman's application, as originally published in the Federal Register in 1965, shows its intentions to tack the proposed routes with authority previously granted, is asserted by ABF to be a restriction against tacking with after-acquired rights. The Commission has not so construed similar restrictions. With respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co. Extension - Oklahoma, 106 M.C.C. 1, 18 (1967); Ruan Transport Corp. Extension - Ames, Iowa, 110 M.C.C. 389, 390-391 (1969);

Further, the examiners' report showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority sought herein (Report, App. A., p. 25). Yet, despite having actual notice of Bowman's intent from the time of receipt of the examiners' report, ABF said nothing about this matter and made no attempt to seek leave to intervene until more than two years had passed.

ABF did not participate in the Bowman/Alabama Highway purchase application even though it would have been appropriate for it to do so to determine Bowman's intent and to show any claimed material adverse effect which might result from tacking. Closely in point is Howard Hall Company, Inc. v. United States, 332 F. Supp. 1076 (N.D. Ala. 1971), where the court explained:

> "The case of Warren Transport, Inc. Extension—Dubuque to North Dakota, 98 M.C.C. 761 points out two basic principles concerning the tacking of common carrier authority: First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order

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> to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension - Liquid Chemicals, 73 M.C.C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M.C.C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 383 (1969)." 332 F. Supp. at 1082.

Thus, in the period August 1965 - November 1968, ABF, on at least three occasions received official notice that the Bowman route proposed in this case and the routes it acquired from Alabama Highway Express would be tacked. As it had no valid interest in the Bowman service at Montgomery, Ala., and because it knowingly sat silently too long, there is no abuse of the Commission's discretion in the denial of the March 27, 1972, petition. United States v. Pierce Auto Freight Lines, supra, 327 U.S. at 535-536; Interstate Commerce Commission v. City of Jersey City, supra, 322 U.S. at 512-513; Colorado-Arizona Express, Inc. v. United States, 224 F. Supp. 894, 901-902 (D. Colo. 1963); Pilot Freight Carriers, Inc. v. United States, 354 F. Supp. 222, 224 (M.D. N.C. 1972).

Commission Review Procedures

Plaintiffs generally complain that due process was denied by the Commission after the report by the hearing examiners. This denial is alleged to have occurred because the decision of the Commission was made solely by Division 1, consisting of three members, who voted unanimously to grant certificates to the three carrier defendants; because this decision was then reviewed by Division 1, acting as an appellate body, consisting of two of the original division members plus one other new member, who dissented; and because the entire Commission refused to review the proceeding as one involving a matter of general transportation importance.





The authority of Division 1 to issue the Commission's decision and to review that decision as an Appellate Division is, of course, statutory.[12/] The exercise of such a statutory function does not constitute denial of due process. Indeed, when a party has the opportunity to present its views in opposition to the Division 1 decision not once but twice, the requirements of due process have been met. Inland Empire District Council v. Millis, supra, 325 U.S. at 709-710. "The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. . . ." Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 152-153 (1941).

In Studna v. United States, 225 F. Supp. 973 (W.D. Mo. 1964), the plaintiff, as plaintiffs in this case, contended:

> ". . . that he was denied due process of law and his statutory rights because his petition for reconsideration of the Commission's decision was acted upon by the same Division that overruled the examiner's findings . . ., rather than by the entire eleven-man Commission or a separately constituted 'appellate division.' Plaintiff further contends that after Division No. 1 of the Commission (consisting of three members) ruled 2-1 that the Plan 2 operations were illegal, plaintiff was entitled to have his petition for reconsideration of this ruling heard by the entire eleven member Commission or at least a majority thereof.
>
> "Plaintiff contends that this cause should be remanded to the Commission for hearing on the petition for reconsideration by the full Commission or at least by six members thereof." 225 F. Supp. at 900.

The court rejected the argument:

> "Plaintiff's contention that the procedure outlined in Rule 1, 101(a)(3) and followed by the Commission in this case violated due process is based upon the claim that an appeal to the very body which made the determination from which the appeal is taken is no appeal at all.
>
> "A similar contention was properly denied in A. B. & C. Motor Transportation Co. v. United States (D. Mass.) 151 F. Supp. 367, l. c. 371-372, in which the Court stated:

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12/ 49 U.S.C. § 17, under which Division 1 decides cases of this kind. I.C.C. Organization of Divisions and Boards, etc., effective July 27, 1965, Vol. 2, F.Carr.Cas., Statute - Regulations, para. 13,092, et seq.

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> 'The arguments are quite without substance. Motions or petitions for rehearing or reconsideration have time out of mind been addressed without thought of constitutional infirmity to the court or judge which, or who, decided the case in the first instance. We see no reason why applications of the same kind to a Commission cannot be similarly addressed.'"
> 225 F. Supp. at 981.

The agency decision now before this court became administratively final, for purposes of judicial review, when Division 1, acting as an Appellate Division, denied plaintiffs' petition for reconsideration. Transamerican Freight Lines, Inc. v. United States, 258 F. Supp. 910, 917 (D. Del. 1966). Plaintiffs' petition requesting the entire Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance[13/] did not affect the administrative finality of the Division 1 denial of the petition for reconsideration. That form of petition, and the discretion vested in the Commission with respect to its disposition, is similar to a petition for rehearing en banc addressed to a Circuit Court of Appeals. 28 U.S.C. § 46(c). "Whether the case will be reheard by the Court of Appeals after decision, and if reheard, by what particular judges, are matters entirely for the Court of Appeals itself." Bridges v. United States, 201 F. 2d 254, 255 (9th Cir. 1952). See Western P.R. Corp. v. Western P.R. Co., 345 U.S. 247, 262, 267-268 (1953).

Plaintiffs do not challenge the lack of a rule by the Commission, as was the case in Western, but rather the exercise of discretion under that rule. In exercising that discretion, the Commission gave plaintiffs "an opportunity to call [the entire Commission's] attention to circumstances in a particular case which might warrant a rehearing en banc" and, as was its usual practice, gave no specific reasons for denying the petition.

Due process and the applicable statute required no more.

---

13/ I.C.C. General Rules of Practice, Rule 101(a)(4), 49 C.F.R. § 1100.101(a)(4) (Supp. 1972).





Conclusion

There is no error. The order of the Commission should stand. The temporary restraining order is dissolved.

So ordered.

United States Circuit Judge

United States District Judge

United States District Judge

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Certificate of Service

I hereby certify that I have this 11th day of August 1973, served a copy of the foregoing Proposed Opinion, Findings of Fact, and Conclusions of Law upon all attorneys of record by first class or air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

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and that copies thereof have been air mailed to:

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The Honorable John E. Miller
Senior District Judge
United States District Court
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The Honorable Paul X. Williams
United States District Court
Western District of Arkansas
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Donald E. Cross



**APPENDIX B**

**Proposed Findings of Fact, Conclusions of Law and Opinion submitted by Bowman Transportation, Inc.**

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas Corporation, et al, | ) | |
| Plaintiffs, | ) | |
| -v- | ) | NO. FS-72-C-65 |
| UNITED STATES OF AMERICA, et al, | ) | |
| Defendants, | ) | |
| and | ) | |
| BOWMAN TRANSPORTATION, INC., et al, | ) | |
| Intervenor-Defendants. | ) | |

## O P I N I O N

This is an action, filed in this Court on October 4, 1972, by sixteen (18) motor carrier plaintiffs[1/] under 28 U.S.C.A. Sections 1336, 1398, 2321, 2325, 2284, seeking judicial review of an order of the Interstate Commerce Commission[2/] served January 24, 1972, styled Herrin

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1/ Arkansas-Best Freight System, Inc., Mercury Motors, Inc., Alamo Express, Inc., Braswell Motor Freight Line, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc. and Jack Cole-Dixie Highway Company, hereinafter collectively referred to as plaintiffs and separately as ABF, Mercury Motors, Alamo, Braswell, C-66, Central, ET&WNC, Eagle, Gordons, Holloway, Mercury Freight, Red Arrow, Red Line, T.I.M.E.-DC, Transcon, Yellow Freight, Roadway and Cole-Dixie. Roadway and Cole-Dixie were permitted to intervene as plaintiffs after filing.

2/ Hereinafter referred to as ICC or Commission.

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Transportation Company, Extension - Atlanta, Georgia[3], 114 M.C.C. 571, granting certificates of public convenience and necessity to three (3) motor carrier applicants[4] under 49 U.S.C.A. Section 307.

## PROCEEDINGS BEFORE THE COMMISSION

The proceedings before the Commission were commenced by the filing of an application by Roadway on December 17, 1964. By July 30, 1965, applications had been filed by seventeen (17) other motor carriers and shortly thereafter the number increased to twenty (20), all seeking to conduct general commodity operations between points in the southeast and southwest. Additionally, Bowman sought to serve three points in Missouri, two in Kansas and seven in Arkansas. Pursuant to Commission rules, notice of each application was published in the Federal Register (FR) and protests were filed to the separate applications by multiple carriers. In order to develop an orderly procedure for handling the applications, a prehearing conference was held at the offices of the Commission in Washington on September 9, 1965, following which ten (10) of the twenty (20) applications were consolidated for hearing.[5]

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3/ By Order entered December 18, 1969, McLean Trucking Company was substituted as applicant in Docket MC-1124 (Sub-No. 206) in lieu of Herrin Transportation Company, but the original style of the proceeding was maintained by the Commission and will be so referred to herein.

4/ Bowman Transportation, Inc., Docket MC-94201 (Sub-No. 56); Johnson Motor Lines, Inc., Docket MC-106401 (Sub-No. 18); and Red Ball Motor Freight, Inc., Docket MC-22229 (Sub-132).

5/ The applications, so consolidated and the date of filing of each were as follows: Dec. 7, 1964, Roadway, MC-2202 (Sub-No. 273); Mar. 23, 1965, Johnson, MC-106401 (Sub-No. 18); May 17, 1965, Red Ball, MC-22229 (Sub-No. 132); May 18, 1965, Floyd & Beasley Transfer Company, Inc., MC-18088 (Sub-No. 36)(F&B); May 28, 1965, Deaton, Inc., MC-11207 (Sub-No. 203)(Deaton); June 14, 1965, Jones Truck Lines, Inc., MC-111231 (Sub-No. 67) (Jones); June 16, 1965, Strickland Transportation Co., Inc., MC-59680 (Sub-No. 147) (Strickland); June 18, 1965, Herrin Transportation Company, MC-1124 (Sub-No. 206) (Herrin); July 12, 1965, Bowman, MC-94201 (Sub-No. 56); July 30, 1965, Baggett Transportation Company, MC-78177 (Sub-No. 304) (Baggett).



Generally, the territorial scope of the application falls into two categories. Four southwest applicants, Red Ball, Herrin, Strickland and Jones, sought to extend their operations to the southeast. Five southeastern applicants, Bowman, Johnson, F&B, Deaton and Baggett[6], sought to obtain authority to the southwest. Bowman also sought authority to serve Topeka, Kansas and Kansas City, Kansas-Missouri, Carthage and Springfield, Missouri and seven Arkansas points. All twenty of the original applicants represented to the Commission that a public need existed for the proposed services sought. The ten consolidated applications were referred for hearing and recommended order to two Examiners[7].

Hearings commenced on March 21, 1966 in Washington and continued, with slight respite, for 147 days through August 24, 1967. The hearing sessions were held at eight cities[8], primarily to accommodate public witnesses located in various sections of the country. 1,009 public witnesses presented oral testimony. There were 1,989 exhibits, many of which were several hundred pages in length and contained studies, depicting traffic flows between the Eastern Seaboard, southeastern and southwestern parts of the country. Evidence in support of 48 protestants was offered by 62 witnesses. The transcript in this proceeding covers 23,423 pages.

At the conclusion of the hearings and prior to the Examiners' Report, volumes of briefs, including abstracts of evidence, were filed. On November 19, 1969, the Examiners served a voluminous Report[9]. They

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6/ Roadway's status and application were somewhat different in that it already operated in both the southeast and southwest, but sought to extend from Montgomery, Ala. to Baton Rouge, La. via Pensacola, Fla. and New Orleans, La.

7/ Now termed Administrative Law Judges, but referred to herein as Examiners.

8/ Washington, Atlanta, Dallas, Houston, New Orleans, Kansas City, Tulsa and Memphis.

9/ 32 pages of text and about 275 pages of appendices.

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found all of the applicants "fit, willing and able to perform the operations proposed"[10], but recommended denial of all applications. The Examiners reached their conclusion by approaching the applications and the tremendous volume of evidence of public need for additional single-line motor carrier service as if general commodities were not involved. They grouped the supporting witness evidence according to commodities shipped, atomized the evidence of the public witnesses, considered the applications collectively instead of evaluating them independent of the other.

Eight of the applicants filed exceptions to the Examiners' Report.[11] Exceptions were filed by 41 shippers, Lorch-Westway, et al, who were permitted to intervene. Replies to the exceptions were filed and the matter was considered by the Commission, Division 1.

In its decision, the Commission found that the Examiners' approach did not permit adequate consideration to be given to the supporting evidence in relation to the territories and points involved and found that a "clearer picture of the supporting witnesses' needs in these proceedings, in view of their magnitude and complexity, would be presented by grouping of the supporting evidence on a geographic basis". Herrin, 114 M.C.C. at 591.[12]

After an extensive analysis and comparison of the evidence in support of and in opposition to the application, the Commission concluded

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10/ Examiners' Report, p. 4

11/ Neither Roadway nor F&B filed exceptions. As to Roadway, the denial by the Examiners became the Order of the Commission by operation of law on March 24, 1970, the last day within which exceptions could be filed. The exceptions of the other applicants nominally embraced F&B, which had the effect of staying the finality of the Examiners' Report as to it. However, F&B's application was denied. Herrin, 114 M.C.C. 612.

12/ The restatement of the supporting evidence, organized geographically appears in Appendix E, Herrin, 114 M.C.C. at 636-756.



that the applications of Bowman, Red Ball and Johnson should be granted. Herrin, 114 M.C.C. at 599, 612-614.[13] It found (p. 599):

> "The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."

## THE AGENCY DECISION, SUBSEQUENT PETITIONS AND THE FINAL COMMISSION ORDER

The Decision and Report of the Commission, Division 1, served January 24, 1972, was unanimous. Following this unanimous order and prior to May 24, 1972, petitions for reconsideration and petitions under Rule 102 of the Commission's Rules of Practice were filed by multiple protestants and the successful applicants replied. By Order served September 6, 1972, a majority of Division 1, as then constituted, denied the various petitions for reconsideration and under Rule 102 as to the applications of Bowman, Johnson and Red Ball.

The protestants then filed petitions under the Commission's General Practice Rule 101(a)(4) requesting the entire Commission to rule and announce that the proceeding involved an issue of general transportation importance. This procedure is similar to the request for a hearing en banc by the federal circuit courts of appeal. Following consideration of these petitions by the full Commission, they were denied by a vote of 6-3.

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13/ None of the unsuccessful applicants is a plaintiff and there is, of course, no issue concerning comparative disposition of the applications in this action. As noted, supra, Fn. 11, Roadway ceased to be an applicant on March 24, 1970, and its interest afterwards was solely as protestant.

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The issues involved were raised and considered during the administrative process, here for judicial review, in:

1. Original briefs filed by substantially all the parties.
2. Exceptions and supplemental Exceptions to the Examiners' Report and replies thereto.
3. Petitions for reconsideration of the Report and Order of the Commission and replies thereto.
4. Petitions under Rule 102 and replies thereto.

Obviously, the administrative proceeding was thorough and exceedingly well documented. The Report and Order of the Commission contains 225 pages, including a detailed summary of the testimony of the public witnesses.

## PROCEEDINGS BEFORE THIS COURT

Following conclusion of the administrative proceeding and on October 4, 1972, this action was filed in this Court by the 16 party plaintiffs. Subsequently, two other carriers were given leave to intervene as plaintiffs. All the plaintiffs, except one (ABF), were protestants to one or more of the applications which were granted. It is significant that most of these applications were filed before any transit time studies of the plaintiffs and that plaintiffs therefore had knowledge of these proceedings prior to their transit studies.

On November 7, 1972, a member of this panel entered a temporary restraining order enjoining the Commission from implementing the orders authorizing the issuance of certificates of public convenience and necessity until completion of judicial review.

A briefing schedule for the parties was fixed by the Court which expired on July 16, 1973. On June 29, 1973, the plaintiffs filed a motion for leave to file a supplemental complaint seeking review of orders of the Commission served December 18, 1972 and May 29, 1973, granting, in part, the application of Jones Truck Lines, Inc., Extension - Atlanta,



Ga., 117 M.C.C. 586, and denying petitions for reconsideration thereto. This motion to file supplemental complaint was opposed by the Commission and the intervenors and was denied by this Court on July 24, 1973, on which date, the subject proceeding was submitted for decision and order on the merits.

## THE VENUE PLAINTIFFS

The plaintiffs filed this action in this Court on the basis of an alleged interest and residence of ABF and Mercury Motors. Title 28, Section 1398, U.S.C.A., provides that such an action:

> ". . . shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action."

ABF did file a protest to the Bowman application, but as the hearings approached conclusion, ABF withdrew its protest to the Bowman application. On page 19,809 (of a transcript of 23,423 pages), counsel for ABF stated:

> "Mr. Examiner, before proceeding with the testimony on behalf of Arkansas Best Freight System, Inc., I would like to state that at one stage in the proceeding -- I believe it was either the prehearing conference or again at the opening of these hearings -- a protest was entered on behalf of Arkansas Best Freight System, Inc., in the Bowman case as well as in the Roadway case and that in view of the amendments in the Bowman case, we desire to withdraw the protest of Arkansas Best in the Bowman case. We have not done that before.
>
> Arkansas Best remains as a Protestant in the Roadway case only."

At the time of its protest and the hearing, Mercury Motors operated over regular routes between Memphis and Fort Smith by way of Little Rock. It appeared at the hearing in support of its protest to the Bowman application and as a witness in support of Gordons protest to the three applications granted. The Bowman application was amended to exclude Fort Smith and the Bowman grant is restricted against the

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transportation of traffic "originating at or received from connecting carriers at Memphis, Tennessee and points in its commercial zone and destined to "points west of the Mississippi River.

## THE STATUTE INVOLVED

The controlling statute is Section 207 of the Act (49 U.S.C.A. § 307) which provides, in pertinent part, that:

> "A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity." (Emphasis supplied.)

## THE ISSUES INVOLVED

The basic question here involved has been succinctly stated and consistently judicially reaffirmed as follows: 14/

> (1) "Whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a review of the record as a whole."

In Patterson v. United States and I.C.C., 178 F.Supp. 771 (1959), Judge Miller of this panel expressed the basic issue as follows:

> "The scope of the review by the court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence."

> (2) Did the Commission commit remandable error in according more weight to the transit time studies of more than 200 public shipper witnesses than it did to the transit time studies of 14 interested motor carrier protestants?

14/ Carolina Freight Carrier Corporation v. U.S., 297 F.Supp. 848, 850.



> (3) Did the Commission have authority to and did it properly consider record evidence subsequent to filing the subject applications?

> (4) Was the issue of economic mutual exclusivity properly and timely raised; if so, was it pertinent and properly resolved?

> (5) Did the Commission commit remandable error in refusing to permit ABF to repudiate its withdrawal of its protest to the Bowman application and to intervene following close of the hearing on the basis of republication involving a point in which it admittedly had no interest and without any effort on the part of ABF to exhaust its administrative remedies?

## THE INVOLVED AREA - GENESIS OF THE ORDER

In Cassens Transport Company, Extension - Three States, 67 M.C.C. 410, the Commission stated:

> "We do not conceive our function in proceedings such as this to preserve the status quo at all costs, denying improvements or augmentations in transportation service. The transportation industry should be dynamic, rather than static; and we would be remiss in our duty, if we hampered, rather than promoted, the easy flow of commerce."

To the same effect see Capitol Bus Company, Extension - Washington, D.C., 69 M.C.C. 447.

Over a number of years, the Commission, with prophetic vision has recognized the expanding development and increasing importance of the South and the increasing transportation importance and needs of the southeast-southwest territory. In 1956, in Walker Hauling Company, Extension, No. MC-103051 (Sub-No. 58), the Commission found that there was extensive industrial development in the South, including Georgia and Florida and that such industrial expansion would continue. In 1957, in Herrin Transportation Company, Extension - Jacksonville, 69 M.C.C. 629, the Commission found:

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> "The southwest and southeast territories here involved have enjoyed a tremendous commercial growth, and this is particularly true of Florida, Louisiana, and points in Texas such as Dallas, Houston, San Antonio and Fort Worth."

In 1960, in Roadway Express, Inc., Extension - Birmingham, Dallas, Houston, 82 M.C.C. 689,[15] it was noted that "a substantial volume of traffic is now moving between Birmingham and points beyond in the southeast on the one hand, and, on the other, points in Texas". Upon review, the Commission there concluded that:

> "The evidence establishes that there is a substantial amount of traffic now available which moves between and beyond the termini of the routes here sought, and a steady growth in this traffic may reasonably be expected."

The Commission has found and recognized that transportation services between the southeast and southwest have "failed to keep pace with the industrial growth of these territories". In 1965, in Braswell Freight Lines, Inc., Extension - Atlanta, 95 M.C.C. 457, in its first order in that case,[16] the Commission held that the Joint Board was in error in failing to approve the subject application:

> "Especially in the light of the continuing growth, population and industrial output in the southeast and southwest. It was

---

15/ In that proceeding, Roadway took a position wholly inconsistent from that here asserted.

16/ Following the first Commission Order, a Three Judge District Court remanded the case to the Commission, on other grounds, for further consideration (Dixie Highway Express, Inc. v. United States (1965), 242 F.Supp. 1016). Upon remand, the Commission extended its former report and reaffirmed its earlier decision (100 M.C.C. 482). On further judicial review, the District Court granted a motion for enforcement of the court's prior judgment and enjoined the Commission, 268 F.Supp. 239. This decision was reversed by the United States Supreme Court in United States, et al v. Dixie Highway Express, Inc., et al, 19 L. Ed. 2d 639. In that case, the Supreme Court rejected the plaintiff's argumenis, here repeated (Pl. Br. p. 3), that the Commission should "grant existing carriers an opportunity to remedy deficiencies in service before issuing a new certificate", and that protesting carriers have a "property" or "business interest" in this certificate that insulates them from grants of authority.



> the existence of similar factors which moved the Commission in 1960 to grant authority to Dallas-Fort Worth and Houston to protestants Roadway and Mercury.
>
> Even with the grant of the Roadway and Mercury certificates and with the obvious efforts of other protestants to improve their abilities to serve the shipping public, it is clear that existing transportation services have failed to keep pace with the industrial growth of these territories. A large percentage of shipments must still move in 3 or 4-line hauls. Considering the extensive shipper support, the documented population growth, the continued industrial expansion of the southeast and southwest, and the dearth of single-line and relatively efficient joint-line services in these territories, we are convinced that there exists a need for improvement in service which protestants despite their undoubted efforts have been unable to provide." (Emphasis supplied.)

These applications followed the specific findings and conclusions of the Commission, judicially approved, as above noted.

## THE SCOPE OF JUDICIAL REVIEW

This is not a novel proceeding in this Court. It is unique only in relation to the volume of testimony and exhibits involved and the detailed and extended consideration applied to the record in the administrative process. The basic legal principles involved remain the same. In the discharge of our responsibility for judicial review, we have the benefit of our prior guide lines, carefully formulated, firmly accomplished and judicially approved by other reviewing courts. In Patterson v. United States and I.C.C., 178 F.Supp. 771 (1959), as here, an action was brought to set aside an order of the ICC. In writing for the Court, Judge Miller (of this panel) stated:

> "The scope of the review by the Court in a case of this kind is limited to a determination of whether the Commission's action is supported by substantial evidence.
>
> The weight to be given by the Court to an administrative finding is well established. In

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Interstate Commerce Commission v. Union Pacific Railroad, 222 U.S. 541, 547, 32 S. Ct. 108, 111, 56 L. Ed. 308, the Supreme Court observed that it would 'not consider the expediency or wisdom of the order, or, whether, on like testimony, it would have made a similar ruling.' In Georgia Public Service Commission v. United States, 283 U.S. 765, 51 S. Ct. 619, 623, 75 L. Ed. 1397, the Court said:

> 'It is not our province to enquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the consistency of its conclusion with those reached in similar cases.'

In a recent case arising in this Circuit, involving a final order of the Interstate Commerce Commission, Judge Devitt, speaking for a three-judge court, said in Quickie Transport Co. v. United States, D.C.D. Minn. 1959, 169 F.Supp. 826, 828, affirmed by the Supreme Court per curiam, 80 S. Ct. 140:

> 'As is well established, the authority of courts in reviewing the actions of an administrative body are very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. We can go no further. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821; Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 227, 228, 63 S. Ct. 589, 87 L. Ed. 724. For further recent expression of our limited authority in this respect, see Canadian Pacific Railway Co. v. United States, D. C., 158 F. Supp. 268; Minneapolis & St. Louis Railway Co. v. United States, D. C., 165 F. Supp. 893.'

The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D. C. W. D. Mo. 1955, 134 F. Supp. 502."

The Patterson case was cited with approval in Zuzich Truck Line, Inc. v. United States and ICC, 224 F. Supp. 457, at 468 (1963), as support for the statement that:



> "The court must sustain the Commission if its findings on the issue of present or future public convenience and necessity are supported by substantial evidence."

In Willis Shaw Frozen Express, Inc. v. United States, 256 F. Supp. 257 (1966), a three-judge court of this division (containing two members of this panel, Circuit Judge Mehaffy and District Judge Miller) noted the limited scope of judicial review, stating that the Court:

> ". . . is not at liberty to substitute its opinion of the evidence or conclusions or judgment for that of the Commission. Such determinations are solely within the province of the Interstate Commerce Commission and the Congress has expressly delegated these matters to the expertise of the Commission."

Substantial evidence is not the equivalent of a preponderance of the evidence but is such "relevant evidence as a reasonable mind might accept as adequate". The mere fact that the Court would have reached a different conclusion is immaterial. Consolo v. Federal Maritime Comm'n, 383 U.S. 607; Garrett Freight Lines v. United States, 305 F. Supp. 149. Mr. Justice Holmes' definition of substantial evidence is still a polestar of judicial review. Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229, 59 S. Ct. 206, 83 L. Ed. 126:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."

If there is a rational basis for the conclusions reached by the Commission, the judicial function is exhausted. Mississippi Valley Barge Lines v. United States, 292 U.S. 282, 54 S. Ct. 692, 78 L. Ed. 1260 (1934); Interstate Commerce Commission v. Inland Waterways Corporation, 319 U.S. 671, 63 S. Ct. 1296, 87 L. Ed. 1655 (1943).

In defining substantial evidence affirmatively, in Superior Trucking Company v. United States, 306 F. Supp. 872, 875 (N.D. Ga. 1969), the Court said:

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> "In considering plaintiffs' objections, we must be guided by the standard of judicial review set out in the Administrative Procedure Act, 5 U.S.C. §1009(e), requiring 'substantial evidence' on the record as a whole. Substantial evidence is something less than the weight of the evidence, Short Lines, Inc. v. United States, 290 F. Supp. 939, 941 (D. R. I. 1968). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by the requisite substantiality. Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966). Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept to support a conclusion'. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126 (1938). Again, the Supreme Court has stated that 'substantial evidence . . . must do more than create a suspicion of the existence of the fact to be established. . . . [I]t must be enough to justify, if the trial were to a jury a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.' N. L. R. B. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300, 59 S. Ct. 501, 505, 83 L. Ed. 660 (1939)."

The plaintiffs argue that the action of the Commission "was arbitrary, capricious, an abuse of discretion, and not in accordance with law", and that these allegations are within the ambit of the Administrative Procedure Act (APA), noting that in Columbia Shippers and Receivers Ass'n, Inc. v. United States, 301 F. Supp. 310, 319 (Del. 1969), the Court said that it must apply:

> ". . . in addition to the 'substantial evidence' test generally applicable to this action, the standard of review set forth at 5 U.S.C. §706(2)(A):
>
> '. . . the reviewing court shall
> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'"

Generally, if there is substantial evidence to support agency



action, it cannot be said to be arbitrary, but we desire to fully consider and will seek to determine every issue here raised. The plaintiffs allege that the orders of the Commission were arbitrary in that plaintiffs contend:

(1) The Commission gave consideration to "service restrictions" of the plaintiff carriers but did not give adequate consideration to alleged similar service restrictions of the applicants.

(2) The Commission took official notice of an industry publication (American Motor Carrier Directory) that one of the protestant carriers had closed one of its Mississippi terminals and alleged that it did not note, in the same publication, that Red Ball had reduced its number of terminals.

(3) The Commission gave greater weight to transit time studies of applicants and shipper witnesses than to those of plaintiffs, specifically, that the Commission gave "full credit" to shipper-sponsored transit time studies and less weight to plaintiffs' studies.

(4) The Commission did not give proper consideration to the ability of plaintiffs to perform their transit time studies.

As did the Commission, we have considered each of these issues.

First, the distinction should be noted between alleged "service restrictions" and "tariff restrictions". A service restriction is one where the carrier declines or refuses to provide service or imposes an embargo on the movement of certain traffic. A tariff restriction is one where the carrier provides the rate or charge for the movement of specified commodities between designated areas or points. For example, a carrier may publish what is commonly termed as a "two or three line haul restriction". This means that the carrier will participate, through interline, in the movement of this traffic between designated points or areas on the basis of through rates (generally lower) only if the movement by participating carriers does not exceed two or three, as the case may be. This is entirely different from a refusal of a carrier to transport

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authorized shipments which it is obligated, under the Act and its certificates to handle. In the subject proceeding, the Commission specifically found that (114 M. C. C. 596):

> "About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the out right refusals of authorized carriers to handle traffic."

After detailing multiple objections, the Commission further noted (114 M. C. C. 597):

> "Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers."

Tariff publications relating to two or three line hauls deal with the rate at which the traffic will move. Refusals of service constitute a blockade or embargo under which the carrier refused to handle the traffic or participate in the movement at any published rate. The fact is the Commission correctly found that approval of the subject applications would materially reduce the impact of any tariff restrictions because even in those instances where a two or three line haul restriction was in effect it would reduce the number of carriers required to handle the movement from origin to destination and in almost every instance involved in this proceeding, provide for the movement from origin to destination with two and not to exceed three carriers. The Commission did not find any service refusals on the part of the successful applicants.

Additionally, the Commission found that (114 M. C. C. 596):

> "The supporting shippers generally express dissatisfaction with the existing transportation services, with the major complaint directed against excessive and erratic transit times between pickup and delivery of their traffic.



> Approximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive."

and that (114 M. C. C. 597):

> "Approximately 110 shippers complaint about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service. There is a clear and direct correlation between the number of times a shipment is interchanged, and the expeditiousness of the service, the possibility of loss or damage, and the difficulty of tracing. Thus, as a general rule, the fewer times a shipment is interchanged, the greater the chance that the shipment will be handled expeditiously, the lesser the chance of loss or damage, and there should be less difficulty with tracing."

Further (114 M. C. C. 597):

> "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service."

and that (114 M. C. C. 597):

> "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States."

All of these findings are supported by and documented in Appendix E to the Commission Report. 17/

In such cases of carrier deficiencies and refusals, the Commission has the duty to procure additional transportation services to carry out the

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17/ For example, the following witnesses complained of protestants' service restrictions, embargoes and outright refusals to deliver shipments (references are to witness numbers and transcript pages): 4(8) - 1724-1756; 15(26) - 2210-2298; 38(77) - 3561-3573; 40(89) - 3800-3822; 52(124) - 4499-4502(f); 54(127) - 4530-4555; 58(134) - 4710-4738; 2(861) - 17929-17947; 22(426) - 10848-10870; 3(214) - 3741-8773; 1(855) - 18430-18451; 3(866) - 18031-18055; 1(30) - 2417-2435; 2(31) - 2436-2453; 3(35) - 2489-2511; 8(125) - 4502G-4502-X; 20(868) - 15084-15094; 1(13) - 1920-1973; 3(27) - 2298-2335; 4(28) - 2339-2440; 5(53) - 3278-3302; 7(78) - 3573-3602; 13(210) - 8622-8637; 17(460) - 11458-11490; 35(252) - 7576-7600; 1(325) - 9197-9235.

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purposes of the Act and the National Transportation Policy.

In Nebraska Short Line Carriers, Inc., Common Carrier Application, 79 M.C.C. 599, 613,[18] the Commission stated that:

> "Where, as here, the existing carriers are shown to have so conducted their operations as to result in serious inadequacies in the service available to a large section of the public, one effective method of correcting the situation is by granting of authority for sufficient additional service, and, in fact, we are charged with the duty of procuring such additional facilities as may be necessary to carry out the purposes of the national transportation policy."

In Galveston Truck Line Corporation v. Ada Motor Lines, Inc., 73 M.C.C. 617, 626, the Commission noted the duty of motor carriers to perform authorized service and warned that they would be held "strictly accountable for its performance" in stating:

> "We think it beyond doubt that the Interstate Commerce Act imposes upon common carriers by motor vehicle subject to our jurisdiction the clear and unmistakable duty to provide adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce within the scope of their holding out to the public, and that they are obligated to accept and transport all freight offered to them in accordance with the provisions of their published tariffs. This duty is almost an absolute one; and, if the public is to be adequately protected, common carriers must be held strictly accountable for its performance."

In Planters Nut & Chocolate Company v. American Transfer Company, 31 M.C.C. 719, 729, the Commission declared:

> "Common carriers by motor vehicle are obligated to accept and transport all freight offered to them in accordance with the provisions of their tariffs. The refusal of the group-two carriers to accept and transport complainants' freight tendered to them by Rutherford and the group-one carriers was and is unlawful. If the group-two carriers desire to continue to serve the public as common carriers, they should serve all of the public, including complainants."

And in Montgomery Ward & Company, Inc. v. Consolidated Freightways, 42 M.C.C. 225, 231, the Commission noted:

> "Every common carrier is under a duty to receive and transport any property tendered to it for transportation, provided the property is such as it holds itself out as willing to carry, or as it usually carries."

In Pensick & Gordon, Inc. v. California Motor Express, 302 F. 2d 391, a shipper filed suit against motor carriers for damages for the alleged breach by the carriers of their duty to render reasonable service without discrimination. The District Court dismissed the complaints for lack of jurisdiction and the shipper appealed to the United States Court of Appeals, 9th Circuit, which held that the only recourse of the shipper was with the Interstate Commerce Commission, and that whether carriers have failed to provide a reasonable and nondiscriminatory service is a question that can be answered only by the Commission, stating that:

> "Whether a carrier has without jurisdiction failed to provide reasonable and nondiscriminatory service is a question of defining the carrier's duty in the framework of the National Transportation Policy and only the Commission can answer that question."

At 114 M.C.C. 605, Fn. 42, the Commission noted that:

> "42. The fall 1971 edition of the American Motor Directory, of which we take official notice, shows that Cole-Dixie maintains a terminal at and serves only one of the involved Mississippi points: Jackson."

We are not persuaded that this fact was of crucial importance in this proceeding. The plaintiffs argue that the Commission should have noted, in the same publication, the closing of some of the Red Ball terminals or agency stations. Significantly, the plaintiffs have never denied the fact found that "Dixie serves only 4 of the 10 Mississippi points sought to be served by Bowman and maintains terminals at only 2. . .". In their

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18/ Affirmed, 148 F.Supp. 31, but reversed on other principles in 371 U.S. 156.

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petition for reconsideration filed in May 1972, the plaintiffs availed themselves of the opportunity afforded by the Commission's General Rules of Practice to rebut any reference which conceivably could be drawn from this one fact. They have not claimed the fact was unlawfully noticed or that it unduly influenced the Commission's decision to their material prejudice. Cf. American Trucking Associations, Inc. v. Frisco Transportation, 358 U.S. 133, 79 S. Ct. 170, 3 L. Ed. 2d 172 (1958). They argue that the Commission should have coupled its Fn 42 notice with notice of the alleged closing of agency stations by Red Ball. The number of Red Ball terminals was only one of the multiple factors considered by the Commission in selecting Red Ball as the southwest applicant to fulfill the public need for service. The Commission considered this specific issue in the petitions for reconsideration. In its reply to petitions for reconsideration, Red Ball showed that it still operated more terminals in the southwest than any of the protestants. Specifically, it showed the number of terminals maintained by Red Ball and other motor carriers in the States of Colorado, New Mexico, Oklahoma, Texas, Arkansas, Louisiana and Mississippi. Red Ball had more terminals than any other carrier.

The plaintiffs' argument is a two edged sword. If the reduction in number of terminals since conclusion of the hearings is to be used as an argument against the Red Ball grant, then the fact that subsequent to the hearings Johnson opened 76 additional terminal facilities and Bowman opened 26 additional terminal facilities would emphasize the grant to these carriers, but all of this information was communicated to the Commission in petitions for reconsideration and replies thereto. The plaintiffs have not shown that this rather insignificant officially noticed fact unduly prejudiced them in any manner whatsoever.

Perhaps the principal thrust of plaintiffs' brief was the contention that the Commission gave greater weight to transit time studies of



applicants and shipper witnesses than to those of the plaintiffs.

Admittedly, the Commission thoroughly considered all transit time studies presented and we may add it did so with exceptional diligence and detail. The obvious work devoted to and time consumed in preparation of the 225 page report is exceptional. We recall few instances where any administrative or judicial proceeding has been so marked with detailed basic findings and facts.

In summarizing the 14 protestants' transit time studies, the Commission stated (114 M.C.C. 599):

> "The studies relate to periods of from 1 day to 1 year, with most covering 1-week periods. They usually embrace all of a carrier's relevant traffic handled during a specified period. The 1-year study of all the relevant traffic handled by one carrier demonstrates on-time performances ranging from a low of 2.0 percent (from Fort Smith, Ark., to South Plainfield, N.J.) and 2.2 percent (from Fort Smith to Newark, N.J.) to a high of 73.3 percent (from Kansas City, Mo., to Washington, D.C.), with the average on-time performance of all the traffic listed being 33.5 percent. Generally, the exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration."

The plaintiffs "interpret" and "assume" that "little, if any, weight was given to those general service exhibits of the protestants" (Pl. Br. p. 127) and argue that more substantial weight was given to the transit time exhibits of the applicants and supporting shippers. As noted, the weight accorded to the various transit time studies, and the reasons therefor, was

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clearly stated by the Commission. Additionally, all of the documents are summarized in the Order, particularly Appendix E.

The Facts show that the 14 transit time studies presented by motor carrier protestants were for comparatively limited and selective periods of time: 6 were for only 1 week; 3 were for 2 weeks; 1 was for 1 month; 1 for 2 months; 1 was selected for periods of 2 days; 2 for 3 months; 1 for a number of 1 week periods; 1 for a week and a month; 1 was for 1 year.

Only two protestants had transit time studies of over two months, one was Consolidated which had a one year study, noted by the Commission (p. 599, Order), and one non-plaintiff protestant (GFA) had a study of 3 months.

After noting and considering all the arguments here repeated, the Commission stated (Order, p. 600):

> "Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service. In addition to the above-described difficulties, many either have been confronted with carrier restrictions or embargoes which limit the service available or have experienced outright refusals by existing carriers to handle their traffic, pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints. We are thus persuaded that the supporting witnesses have shown a valid public need for additional motor carrier service to the extent set forth in our findings."

650, or approximately 80% of the 824[19/] shipper witnesses who testified in this proceeding had specific complaints of inadequate and inconsistent transit time and expressed a dire need for reliable and consistent service between the Bowman authorized and proposed points.

The supporting shippers and receivers testified that as a result of inconsistent and excessive transit times experienced on a recurring basis,

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19/ This represents the 933 witnesses who testified less the 109 which supported the application of Roadway.



their business has been materially hampered by an inability to

- -- reduce inventories where their storage space and investment capital were limited.
- -- maintain production schedules where they are dependent upon consistent service.
- -- give timely delivery or serve customers on special orders, for example, on special and promotional merchandise not in stock or merchandise involving government contract work containing penalty clauses for delays if timely deliveries are not effected.
- -- take short term discounts.
- -- obtain job site delivery to metropolitan areas where construction crews and production lines frequently are awaiting arrival of goods and supplies.
- -- carry in stock the multiple sizes, colors and grades of such items as carpets, textiles, tile and paint, thereby making it necessary to order from brochures or samples and to depend upon expeditious, consistent motor carrier service.
- -- order from preferred markets.

Additionally:

- -- the fact that quicker and more dependable service is available between the west coast and Texas points, militates against the southern market.
- -- installations cannot be made in the time and manner required.
- -- companies have been unable to advise customers as to the delivery of special orders of merchandise not in stock.
- -- many companies have been required to pay higher or premium prices in order to insure a reasonable delivery time from now preferred markets.

The plaintiffs urge this Court to judicially hold that in the study and application of such transit time exhibits, the Commission, as a matter of law, must give greater weight to the records of protestant motor carriers, a position which the Commission previously has rejected in Strickland Transportation Company, 77 M.C.C. 855, 863, stating:

> "We cannot accept the general proposition that a carrier's records are accurate and

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> that a shipper's records are not, or that the carrier's records are more likely to be accurate than the shipper's."

It is well settled that reviewing courts should not weigh the evidence. As was recognized in Arrowhead Freight Lines v. United States, 115 F. Supp. 537, 544 (S.D. Cal. 1953):

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made in other cases, is beyond our province." (Citations of five Supreme Court cases omitted). (Emphasis supplied.)

We are persuaded that the Commission gave careful consideration to those transit time studies introduced to support the applications and those presented in opposition, then measured them in comparison to each other. In regard to the transit time studies sponsored by more than 200 shippers to show undependable service, the Commission found, Herrin, 114 M.C.C. at 598:

> "The exhibits show that on a substantial volume of traffic moving between points which applicants propose to serve overnight, shippers have been receiving from 1-to-7 day service, with an average transit time of about 3 days. On traffic which applicants propose to render 2-day service, shippers received between 1-and 14-day service, and the average transit time was about 4 days. A substantial volume of traffic which would receive 3-day service under the various proposals is demonstrated to be subject to service ranging from 2 to 12 days, and averaging about 5 days. And, traffic which would receive 4-day service under applicant's proposals is shown received between 3-and 15-day service, with an average transit time of about 6 days. Many of the service exhibits do not cover all of the shipper's pertinent traffic during the study period and some include shipments which were listed because complaints were received on this traffic. Nonetheless, in our opinion, the exhibits taken collectively are representative of the service these shippers are and have been receiving."



In contrast, the Commission found that the protestants' studies either did not show a reliable service or did not show as valid a picture as those introduced in support of the applications.

In sum, the transit times studies of the 14 protestants generally relate to short periods of time[20] and were made when protestants were confronted with the possibility of additional competition. Those of the shippers, on the other hand, were more varied and inclusive and thus reflected a more typical experience. In these circumstances, the Commission was justified in treating the 200 shipper-sponsored studies as a more valid guide. In Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482 (1966)[21], in circumstances much the same as here, the Commission said at 499-494:

> "As noted, periods of time covered by the protestants' service exhibits generally occurred subsequent to the notice or commencement of the hearing herein. Thus, most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise. We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive

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20/ One protestant, Consolidated, introduced a transit time study covering a one year period showing that in the carriage of 54,681 shipments (more than 45% of the shipments reflected in all of the protestants' time studies), it achieved an on time performance of only 33.5%. The Commission was clearly justified in finding contrast between the long term study of all the relevant traffic and "certain instances" of "expeditious service" in the short term studies. It certainly was not irrational for the Commission do do so, as plaintiffs mistakenly charge. (Pl. Br., pp. 157-160).

21/ A prior Braswell decision in the same proceeding was remanded by order of Court. Dixie Highway Express, Inc. v. United States, 242 F. Supp. 1016 (S.D. Miss. 1965). The cited Braswell decision was also rejected by that court, Dixie Highway Express, Inc. v. United States, 268 F. Supp. 939 (S.D. Miss. 1967), but, on appeal, the lower court was reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409 (1967). When the case arose for a third time, the Commission's decision was upheld, per curiam, Dixie Highway Express, Inc. v. United States, 287 F. Supp. 473 (S.D. Miss. 1968).

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> service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected areas."

This standard conforms to an even earlier judicial stamp of approval to the Commission's exercise of discretion in a similar situation. In T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777 (S.D. Tex. 1960), affirmed sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, Circuit Judge Brown explained, 186 F. Supp. at 791-792:

> "The [transit time] evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." (Emphasis supplied.)

The Commission found that approximately 650 shippers complained about inconsistent and excessive transit times, and that over 200 of these witnesses introduced transit time studies demonstrating the undependable service they presently received. 114 M.C.C. 596.

To state this finding another way, (1) 650 public witnesses orally complained about excessive transit times and (2) 200 supporting witnesses corroborated those complaints with abstracts of shipping documents. These abstracts or "transit time studies" showed the actual number of days



elapsing between the receipt of the shipment by the "originating carrier" and its delivery at destination by the "delivering carrier"[22/].

The 650 oral complaints respecting excessive transit time were received in evidence and weighed by the Commission in reaching its findings. Oral transit time complaints by the public bottomed the certificate award approved in West Brothers, Inc. v. United States, 303 F. Supp. 1171 (S.D. Miss. 1969). Moreover, this rule of evidence in I.C.C. operating rights cases has been observed for many years. As the Commission put it in 1957 in Bostwick Common Carrier Application, 72 M.C.C. 317, 324:

> ". . . we [do not] agree with protestants that the admission of [oral] evidence relating to specific delays experienced by shippers without underlying documents in support thereof was improper. True, underlying documents would serve to corroborate such evidence, but, historically, evidence relating to the type and character of service received by shippers and receivers, gleaned from their own personal knowledge and gained during the conduct of their businesses, has been accepted."

In this huge proceeding over 200 of the 650 public witnesses corroborated their oral complaints as to unsatisfactory transit times with abstracts of underlying shipping documents prepared and maintained in the normal and ordinary course of their business. Oral testimony thus corroborated is entitled to and has historically been accorded "more than merely nominal weight by" the Commission. T.I.M.E. Freight, Inc., Extension - Alternate Routes, 89 M.C.C. 241, 244 (1962).

In an effort to refute the public's oral and documented complaints as to excessive transit times, 14 of the 48 protestants in the consolidated proceeding submitted transit time studies. After considering this evidence

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22/ When a shipment is transported in "single line service" it is originated and delivered by the same carrier; when it is transported in "joint line service" it originates on the line of one carrier and is delivered on the line of another.

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at length, the Commission found ". . . that protestants' studies do not present as valid a picture as those introduced by [the public witnesses]." 114 M.C.C. at 599; App. G at 764, 767, 770, 772, 774, 776, 777, 779, 780, 782, 785, 786, 787, 792. In sum, the Commission simply gave greater evidentiary weight to 200 studies sponsored by impartial public witnesses than it accorded 14 studies submitted by carriers having a vital interest in defeating the applications.

We have not been convinced that the Commission was wrong.

In a similar situation in T.S.C. Motor Freight Lines, Inc. v. United States, 186 F. Supp. 777, aff'd 366 U.S. 419, Chief Judge John R. Brown of the Fifth Circuit responded to the plaintiff's argument that the agency accorded too much weight to transit time complaints of shippers and too little to the transit time studies of protestants, stating:

> "The evidence adequately supports the Commission's ultimate finding. It is the conventional type of evidence usually submitted to the Commission in proceedings of this kind calling for the evaluation of many variable factors and the exercise of sound judgment to reach an equitable and fair decision. The evidence adduced supports the statements of underlying reasons made by the Commission. And the evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications further supports the basic conclusion of the Commission on the need for additional service. If the prospect of additional competition brings about such beneficent results, surely the Commission in the exercise of its informed judgment could find that the additional carriers would give a healthy climate of controllable competition without being destructive to the position of the existing carriers." 186 F. Supp. at 791-792.

Judge Brown's opinion in T.S.C. is not the only guideline supporting the Commission's determination here. Bringing to bear its expertise developed over many years in deciding applications for new or extended operating authority, the I.C.C. resolved essentially the same evidentiary



problem in precisely the same way in 1956 in Braswell Motor Freight Lines, Inc., Extension - Atlanta, 100 M.C.C. 482, saying:

> "We are not persuaded that the exhibits of protestants show anything more than satisfactory transit-time service performed for short periods when faced with the possibility that competitive service by this applicant might be authorized in the instant proceeding. In the circumstances, it is our considered opinion that the exhibits sponsored by the supporting shippers and receivers convey a truer picture of the overall pattern of transit-time service existing in the affected area." 100 M.C.C. at 493-494.

Tacitly admitting established transit time deficiencies, the plaintiffs argue that they should have been given an opportunity to remedy the defects in their transit time, but this argument recently has been considered and rejected by the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L.Ed. 639 (1967)

In the Dixie Highway litigation the Commission awarded a certificate to Braswell notwithstanding that during the course of its consideration of Braswell's application, protestants Mercury and Roadway were newly certificated to operate over some of the routes involved in Braswell's proposal. There, as here, Mercury and Roadway, among others, claimed that these changed circumstances required a denial of the Braswell application because the newly certificated carriers had not been found to be rendering inadequate service. A three-judge district court agreed, and annulled the Braswell award. Dixie Highway Express, Inc. v. United States, 268 F. Supp. 239 (S.D. Miss. 1967). The Supreme Court reversed, United States v. Dixie Highway Express, Inc., 389 U.S. 409, 88 S.Ct. 539, 19 L. Ed. 2d 639 (1967) saying:

> "The District Court erred in holding that it is the 'invariable rule' of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and

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necessity pursuant to the statute. The Commission's power is not so circumscribed. No such limitation has been established by the Commission's own decisions or by judicial determinations. It is, of course, true that the Commission should consider the public interest in maintaining the health and stability of existing carriers, see United States v. Drum, 368 U.S. 370, 374, 7 L. Ed. 2d 360, 363, 82 S. Ct. 408 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.' ICC v. Parker, 326 U.S. 60, 70, 89 L. Ed. 2051, 2062, 65 S. Ct. 1490 (1945); see Schaffer Transportation Co. v. United States, 355 U.S. 83, 90-91, 2 L. Ed. 2d 117, 122, 123, 78 S. Ct. 173 (1957)." 389 U.S. at 411-412.

The Supreme Court then remanded the case to the District Court for further action consistent with its ruling. Reversing its prior annulment in light of the Supreme Court's holding, the three-judge District Court said:

"But [our prior criticism of the treatment of the Mercury and Roadway certificates] did not peoperly reckon with the fact that the Commission was not obliged to specifically find the transportation service of such carriers inadequate in order to find additional transportation service necessary in the public interest in the particular area. The Commission had a right to find a further need of service by the general public without a specific finding of the existence of inadequate service by either carrier. That was merely one of the elements for its consideration but was not indispensable as a specific finding by the Commission to a proper award of a certificate. (Footnote omitted) A sound discretion in the exercise of highly specialized knowledge in the field of interstate transportation was confided by the Congress to this Commission and not to a court on a de novo consideration or review of its decision."

Contrary to plaintiffs' argument, the Commission did give consideration to the ability of applicants to perform their transit time proposals, even though no exceptions were taken to the Examiners' finding that the applicants were capable of the service they proposed.[23/] The

23/ Examiners' Report, p. 4



Commission said (114 M.C.C. at 611):

"Some of the protestants challenge the feasibility of the proposal of Red Ball, Bowman, and Johnson in light of their present service over similar distances. Nevertheless, as pointed out in West Brothers, Inc., Extension - Baton Rouge, La., 106 M.C.C. 792, 799 (1968), modified on other grounds at 108 M.C.C. 485 (1969):

'Evidence that applicant's transit time for existing services over a shorter distance is more than . . . [the proposed transit time] is not conclusive proof that it will not render . . . [the proposed transit time] between the points proposed. The service and highway conditions between the service points and routes may be so different that what happens in one case may bear no relation to what will happen in the other.'"

The plaintiffs further argue that the Commission failed to consider service instituted during the course of the proceeding in determining the competitive effect upon existing carriers. At page 576 of its order, the Commission stated:

"As indicated in appendix D, certain protestants request that official notice be taken to specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. West Brothers, Inc., Extension - Baton Rouge, La., 108 M.C.C. 485, 489 (1969); and Ayers Extension - Cheyenne, Wyo., 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting carriers not parties". (footnote: "Bell Transfer Company, Inc., Interstate Motor Freight System, Bestway Express, Inc., Dean Truck Line, Inc., England Transportation Company, Inc., Saia Motor Freight Line, Inc., and Terminal Transport Co., Inc.") "to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations."

Specifically, we find that the Examiners or the Commission, or both, referred to the following orders relating to subsequent changes:

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(1) McLean-Control-Herrin, MC-F-10121, Merger, decided 8-5-69 and substitution of McLean for Herrin as applicant. (ERO, p. 2 and appendix A, p. 1) (O, p. 571, 600, 615, and 627).

(2) "Since the close of the hearing Herrin, Braswell and Mercury Freight also obtained authority to operate between Atlanta and Dallas and Atlanta and Houston". (ERO p. 16, footnote 13.)

(3) Roadway Exp-Control-West, MC-F-10178, decided June 26, 1969. (ERO p. 22, and appendix A, p. 6) (O, p. 782)

(4) MC-111383, Sub 16, Braswell Motor Freight (ERO, p. 27, and appendix D, p. 56) (O, p. 792)

(5) MC-75320, Sub 106, Campbell Sixty-Six Exp. (February, 1969) (ERO, p. 27, and appendix D, p. 35) (O, p. 777)

(6) MC-F-10585, Campbell Sixty-Six-Merger-United (November, 1969) (O, p. 611 and 777)

(7) MC-F-10219 and MC-75320, Sub 144, Campbell Sixty-Six (O, p. 777) (April 1969)

(8) MC-75320, Sub 150, Campbell Sixty-Six (April 1970) Ext., Atlanta (O, p. 777).

(9) MC-F-9730, Herrin-Purchase (Portion)-Tamiami, (ERO, appendix A, p. 4)

(10) MC-F-9921, Bowman-Purchase (Portion) Alabama Highway Express (August 1968) (ERO appendix A, p. 25) (O, p. 585)

(11) MC-94201, Sub 86, Bowman Trans., Inc. (July 1971) (O, p. 575 and 772)

(12) 104 M.C.C. 737 - Yellow Freight-Merger-Watson-Wilson (December 1968) (ERO appendix D, p. 12) (O, p. 764)

(13) MC-F-9918, Mercury Freight Lines, Inc.-Purchase (Portion)-Sam N. Cole (April 1969) (ERO, appendix D, p. 27) (O, p. 771)

(14) West Brothers-Extension-Natchez and Baton Rouge (ERO appendix D, p. 29) (O, p. 772)

(15) MC-F-9871, Admiral-Merchants-Control-Jack Cole-Dixie Highway Co. (November 1967) (ERO appendix D, p. 36) (O, p. 777)

(16) MC-F-10107, Jack Cole-Merger-Dixie Highway (October 1968) (O, p. 634)



(17) 109 M.C.C. 76, Consolidated Freight-Control (1969) and MC-42487, Sub 744 (January 1971) (O, p. 759)

(18) MC-F-9822 and MC-35320 (Sub 109), T.I.M.E.-DC (May 1970) (O, p. 762)

(19) 110 M.C.C. 892 (1969), Georgia-Florida-Alabama Transp. Co. Extension (O, p. 774)

(20) MC-41432 (Sub 103), East Texas Motor Freight, Inc. Ext.-Mississippi and Louisiana Points (1971) (O, p. 779)

(21) MC-F-10260 and MC-31389 (Sub 120), McLean Trucking Co. - Purchase - S. Z. Harrison (August 1970) (O, p. 784)

(22) MC-31389 (Sub 121), McLean as substituted applicant for Herrin (March 1970)( O, p. 784)

(23) 112 M.C.C. 558 (1970) Braswell Motor Freight Lines, Inc., Ext., MC-111383 (Sub-No. 17) (July 1971) (O, p. 792)

We have also noted disposition of the ten applications preheard with the ten applications considered in this proceeding, and have noted that a substantial majority of those applications were approved by the Commission.[24/]

## THE PETITION OF ABF FOR LEAVE TO INTERVENE AND FOR RECONSIDERATION

A brief background of pertinent facts is helpful to place the petition of ABF to intervene in proper perspective. The Bowman application was filed on June 12, 1965. Notice of the application was published in the FR of August 19, 1965. The application was restricted:

> To the transportation of traffic moving from, to or through Birmingham and Mobile, Alabama, Pensacola, Florida, and Memphis, Tennessee.

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24/ Braswell Sub-No. 17 granted: C-66 No. 103 granted with conditions; Mercury Freight Subs-No. 11 and 12 granted; Transcon Sub-No. 54 granted; Deaton Sub-No. 232 denied; Gordons Sub-No. 94 and Dixie Ohio Sub-No. 62 - dismissed by applicants.

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Route (5) sought authority:

> Between Montgomery, Alabama and junction U.S. Highways 11, 80 and Interstate Highway 59, over U.S. Highway 80, serving all intermediate points.

and Route (6)(a) sought authority:

> Over U.S. Highway 11 (also over Interstate Highway 20) from Birmingham to Meridian, Miss.

> These two routes, (5) and (6)(a), connected at the junction described in Route (5).

At the inception of the consolidated proceedings, ABF protested the applications of Roadway and Bowman. However, prior to the presentation of protestants' evidence in opposition, ABF, as previously noted, withdrew its protest to the Bowman application which was amended to eliminate proposed service to Fort Smith, Arkansas and Oklahoma points.

Throughout the proceeding, Bowman's intention was clearly stated to use the Montgomery gateway and the junction point named in Route (5) for the purpose of joinder only. The Commission Order states that (611-612):

> ". . .although Bowman indicated that it intends to render service between Montgomery and points on its proposed routes, it appears that in addition to failing to include Montgomery in the restrictive language embodied in its application, this applicant's proposed route from Montgomery terminates at a point which is not a service point on its proposed routes south from Tuscaloosa, Ala. As Bowman's intent was clearly specified with respect to the use of Montgomery as a gateway, and since a need has been shown for the use of this gateway, these defects will be cured, subject to prior publication in the Federal Register, by authorizing Bowman to serve the junction of U.S. Highways 11 and 80 and Interstate Highway 59 at or near Toomsuba, Miss., for the purpose of joinder only on its route between Tuscaloosa and Hattiesburg and by including Montgomery in the restrictive language."



Pursuant to that Order, notice was republished in the FR of Thursday, February 22, 1972, following which ABF filed a petition to intervene and for rehearing. It is the only plaintiff which did so.

The complaint of ABF involved the acquisition by Bowman of a part of the operating authority of Alabama Highway Express, Inc. (AHE) during pendency of the subject proceedings and the acquisition by ABF of a part of the operating authority of Youngblood Truck Lines in Docket MC-F-11179.

## CHRONOLOGY OF PERTINENT DATES

A chronology of pertinent dates is helpful to understanding the issues here involved.

| | | |
|---|---|---|
| June 12, 1965 | - | Bowman application was filed. |
| August 19, 1965 | - | Notice of Bowman application in the Federal Register |
| September 3, 1965 | - | ABF filed protest to the Bowman application |
| March 29, 1966 | - | Bowman amendment, X-46, received (972) |
| June 15, 1967 | - | ABF withdrew its protest to the Bowman application |
| November 1, 1967 | - | Notice of application, Bowman-Purchase(Part) - AHE in FR |
| August 15, 1968 | - | Bowman - Purchase (Part) - AHE consummated with Commission approval |
| May 19, 1971 | - | Application filed, ABF - Control and Merger - Youngblood, MC-F-11179 |
| October 15, 1971 | - | ABF-Control and Merger-Youngblood approved by Commission |

The Commission noted that Bowman's intent to "use Montgomery as a gateway" was clearly specified throughout the proceedings. Bowman presently holds authority to serve that point. The republication did not add any new points or routes. It simply specified that Montgomery could be used as a gateway and that the junction described in paragraph (5) of the original application could be used for the purpose of joinder only.

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During the subject proceeding, Bowman acquired a part of the operating authority of AHE. Notice of this application was published in the FR on November 1, 1967, and, after hearing, with approval of the Commission, was consummated in August 1968. ABF did not protest this application. Approval of this acquisition gave Bowman operating authority between Birmingham, Alabama and points within a radius of 65 miles thereof, on the one hand, and, on the other, points in Indiana, Tennessee, the northwest two-thirds of Ohio and the central one-third of Illinois.

Thereafter, on May 19, 1971, ABF filed an application to merge its authority with that of Youngblood Truck Lines. This application was approved by the Commission on October 15, 1971 in Docket MC-F-11179. The acquisition of Youngblood by ABF extended its operations into North Carolina, South Carolina and Georgia. By reason of the Youngblood acquisition, ABF can transport freight between the named Atlantic Seaboard states, on the one hand, and, on the other, its central freight territory. Additionally, Youngblood can transport freight between its western territory and its central freight territory. In brief, ABF argued that the authority which Bowman acquired from AHE should be restricted in this proceeding. The petition of ABF was referenced as number (6) in the Order of the Commission on rehearing dated September 1, 1972, and was denied by the Commission for the following stated reasons:

> "It is further orderdd, that the petitions in (1), (2), (3), (4), (5), (6), and (7) above collectively seeking leave to intervene, and requesting further hearing and reconsideration be, and they are hereby, denied and rejected, respectively, for the reasons (1) that the publication of the grant of authority in No. MC-94201 (Sub-No. 56) was made for the purpose of apprising the interested persons of the additional authorization to use Montgomery, Ala. as a gateway and to serve a specified point in Alabama for purposes of joinder only, which was not included in the notice of authority sought as originally published in the Federal



> Register issue of August 19, 1965; (2) that the petitioners' stated interests in No. MC-94201 (Sub-No. 56) are generally based either (a) on authority in conflict with the services proposed as set forth in the publication as originally made; and petitioners had ample notice and opportunity but failed to file timely protests at the time in the proceeding in which they now assert an interest or, as in the case of petitioner in (6) above, filed a timely protest and later withdrew said protest, (b) on authority acquired by them after the original publication, which authority does not conflict with the additional authorization necessitating republication or which, as in the case of petitioner in (3) above, although it may conflict with the additional authorization, it has not been shown to be prejudiced by the involved portion of the grant requiring republication, or (c) on authority acquired by applicant after the original publication, which authority was considered in the report and which is not relevant to the need for republication; (3) that the petitioners fail to show the extent to which they have been prejudiced, if at all, by the grant of authority to applicant in MC-94201 (Sub-No. 56) to the extent is authorized service at Montgomery, Ala., and a specified point in Alabama for purpose of joinder only; and (4) that, even if intervention were permitted and the proceeding reopened for the receipt of additional evidence relating to the authority acquired by certain of the petitioners subsequent to the original publication, there is no showing that such evidence would warrant a result different than that reached in the report and order of Division 1 with respect to the authorization to serve Montgomery, Ala. and a specified point for purpose of joinder only."

The defendants assert that the Commission was right and the petition of ABF was not well taken. In support, they point to the following facts:

(1) ABF withdrew its protest to the Bowman application. Admittedly, ABF was an original protestant to the Bowman application. It withdrew its protest following completion of shipper testimony with knowledge of the intended use of the Montgomery gateway and joinder of Routes (5) and (6)(a) at the noted junction.

(2) ABF did not protest the Bowman acquisition of AHE. Admittedly, ABF had notice of the Bowman application to purchase AHE and did not file a protest.

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Rule 247(d)(2) of the Commission's General Rules of Practice specifically provides that:

> "Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding . . ."

The argument of ABF that the Commission should consider the Bowman application in the light of facts other than those related to Montgomery necessarily is based on a premise that ABF could not have known until the republication that Bowman would be able to tack[25/] the rights granted in this proceeding to the operating authority which Bowman obtained by purchase from AHE in August 1968.[26/]

The language of the Bowman application is not now nor was it at the time of FP publication ever construed by the Commission to be a restriction against tacking with after-acquired authorities. If a restriction had been intended, the notice would have so stated because, with respect to tacking, it is a well-established policy of the Commission not to encumber grants of authority with restrictions against tacking unless a clear need for such a restriction is shown. Fox-Smythe Transportation Co., Extension - Oklahoma, 106 M.C.C. 1, 18 (1967). In Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969), the Commission explained the reason for the policy, 110 M.C.C. at 390-391:

> "The reason for the foregoing is relatively simple. The right of a common carrier to join separate unrestricted grants of authority at a point of service common to both authorities in order to provide a through service does not ordinarily accrue to the carrier on the basis of a finding that the public convenience and necessity require the through service. Rather, it comes into existence as a logical sequence to the fact that if two separate authorities with a common point of service were held by different carriers, such carriers could participate in an interline movement for the provision of a through service. In other words, the right to tack is primarily an extension of interchange concepts and is subject to many of the privileges and obligations which attach to interchange."

Furthermore, the Examiners' Report served November 19, 1969, showed that the hearing officers understood Bowman intended to tack its then existing authority, including the rights it had acquired from Alabama Highway Express the year before, to the authority it sought herein.[27/] In fact, the Examiners' Recommended Report specifically stated on page 25 that:

> "NOTE: In August 1968 Bowman acquired a portion of the operating rights of Alabama Highway Express which included among other authority the transportation of general commodities (with exceptions) between Birmingham and points in Alabama within 65 miles of Birmingham, on the one hand, and, on the other, Louisville, Ky., and points in Indiana, Tennessee, and portions of Florida, Illinois, and Ohio. No. MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. . . . decided July 8, 1968."

Despite having actual notice of Bowman's intent from the date of receipt of the Examiners' Report, ABF did nothing and made no attempt to seek leave to intervene until more than two years had passed. ABF did not protest the purchase application although it was timely and appropriate for ABF to do so if it claimed any adverse effect.

Closely in point is Howard Hall Company, Inc. v. United States, 332 F.Supp. 1079, 1082 (N.D. Ala. 1971), where the court explained:

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25/ "Tacking" means a carrier's ability to join two or more grants of authority by the Interstate Commerce Commission to provide service between points in one territorial grant and points in another territorial grant, or grants, via a common point or points. Daily Express, Inc. v. United States, 342 F.Supp. 1295, 1298 (M.D. Pa. 1972).

26/ Notice of the filing of this application in Docket MC-F-9921, Bowman Transportation, Inc. - Purchase (Portion) - Alabama Highway Express, Inc. was published in the Federal Register on November 1, 1967. There was a republication, showing additional authority granted, in the Federal Register on June 19, 1968.

27/ Examiners' Report, Appendix A, p. 25

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> "The case of Warren Transport, Inc., Extension - Dubuque to North Dakota, 98 M.C.C. 761, points out two basic principles concerning the tacking of common carrier authority: First, that the tacking of two separate unrestricted irregular-route authorities is permissible as a basic right incidental to the holding of such authorities, which right does not come into existence by virtue of any showing of a need for through service, but rather as a by-product of the manner in which motor carrier operations are physically conducted on an interchange basis between separate carriers; and secondly, that although the Commission may impose restrictions on authority to prohibit such authority from being tacked with another in order to perform a through service, such restrictions will not be imposed unless the existing carriers establish that they will be materially adversely affected by such tacking operation. See also: Eldon Miller, Inc., Extension Liquid Chemicals, 73 M.C.C. 538; Klipsak Hauling Co., Extension - St. Joseph, Mo., 111 M.C.C. 295 (1970), Ruan Transport Corp., Extension - Ames, Iowa, 110 M.C.C. 389 (1969)."

The FR notice of the subject application and the Bowman purchase of AHE constituted official notice to ABF of Bowman's intention to tack. ABF's 1972 petition for intervention is untenable, and as the United States Supreme Court stated in United States v. Northern Pacific Railway, 288 U.S 490, 53 S. Ct. 408, 77 L. Ed. 914:

> "They sat silent and took the chance of a favorable decision on the record as made. They should not be permitted to reopen the case for the introduction of evidence long available and susceptible of production months before the Commission acted."

(3) To insert a restriction affecting the rights Bowman acquired from AHE would constitute an unlawful revocation of rights.

Admittedly, there was no restriction proposed in the AHE purchase proceeding and none was imposed. The defendants take the position that to impose such a restriction, at this time, in a separate proceeding, would constitute a revocation of operating rights which could be considered only under Section 212 of the Act "for willful failure" of Bowman to comply



with the Act or lawful regulations promulgated thereunder and following notice, hearing and failure to comply with an order of the Commission directing compliance.

(4) ABF is not authorized to serve any cities in Alabama.

As noted, the republication simply added Montgomery to the restriction in the Bowman application. Admittedly, ABF neither holds nor claims to hold any authority to serve Montgomery or any Alabama points. It could not be prejudiced by the amendment to the restriction in the Bowman application adding Montgomery since it can handle no freight to or from Montgomery and cannot serve the involved junction point.

(5) ABF has failed to exhaust its administrative remedies

The ABF petition for intervention was filed after it had participated throughout the proceeding and after it had withdrawn its protest to the Bowman application. ABF did not file a petition for reconsideration of the order of the Commission dated September 1, 1972 denying its petition for intervention and reconsideration, and it took no further administrative action with respect to that order. In the October 4, 1972 complaint to this Court, plaintiffs alleged, for the first time, that in declining to permit ABF to re-enter and reopen the proceeding, the Commission denied "due process". ABF's failure to seek Commission reconsideration of the Commission order of September 1, 1972 precludes it from raising the issue for the first time before this Court. See the Opinion of Judge Miller of this panel in United States v. Carroll, 203 F. Supp. 423 at 428. Commission Rule 101 provides that:

> "All decisions . . . of a division of the Commission in any proceeding shall be considered administratively final except . . . those wherein the initial decision is made by a division."

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The decision denying the petition of ABF to intervene was an intial decision made by the Division. ABF did not file any petition for rehearing of that aspect of the order and thus did not exhaust its administrative remedies.

ABF had knowledge of the proposed unification of Bowman's Sub-No. 56 routes and the AHE routes from the proceedings herein and from two other official sources, (1) the November 1, 1967 FR notice of the Bowman/AHE transaction, and (2) the November 19, 1969 report recommended by the Herrin hearing officers. Notwithstanding this knowledge, ABF took no steps in the period 1967-1972 to oppose the Bowman/AHE acquisition or to re-enter the Bowman Sub-No. 56 case. During that same period ABF acquired Youngblood. Then, when the Herrin case was drawing to a close after almost eight years of I. C. C. handling and under a FR notice in which it had no valid interest, ABF sought to re-enter and reopen this proceeding to evidence the very changes it had for four years silently observed take place.

The Commission justifiably refused the request. As ABF sought no relief relevant to the public notice upon which it purported to act, the Commission validly declined to delay disposition of a proceeding then in its eighth year of processing. Moreover, the relief actually sought by ABF was simply that the I. C. C. rehear the Bowman Sub-No. 56 case in light of Bowman's 1968 acquisition of AHE and ABF's 1971 acquisition of Youngblood. But the Herrin hearing officers had noted and the agency's decision had given effect to the Bowman/AHE purchase. ABF itself was responsible for the lack of notoriety regarding the ABF/Youngblood purchase and, in any event, that purchase has no relevancy to the Bowman award at Montgomery, Ala.

Requests for rehearing in administrative proceedings are not a matter of right, but a plea to discretion; and the discretion to be invoked is that of the body making the order and not the reviewing body. United



States v. Interstate Commerce Commission, 396 U.S. 491, 90 S. Ct. 708, 24 L. Ed. 2d 700 (1970); Watkins Motor Lines, Inc. v. United States, 243 F. Supp. 436 (D. Neb. 1965); Colorado-Arizona-California Express, Inc. v. United States, 224 F. Supp. 894 (D. Colo. 1963). A denial of further hearing is not open to attack unless in "clear abuse" of discretionary authority. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821 (1946).

## THE ISSUE OF ECONOMIC MUTUAL EXCLUSIVITY

On August 18, 1972, eight months after the Division Order, a group of the protestants filed a petition under Commission Rule 102 seeking to consolidate all of the applications in the subject proceeding with those in two other unrelated proceedings, East Texas Motor Freight (Sub-No. 103) and Bell Transfer (Sub-No. 6). In that petition, they raised, for the first time, an issue of economic mutual exclusivity, claiming that it is a natural extension of the doctrine articulated by the Supreme Court in Ashbacker Radio Corp. v. F. C. C., 326 U.S. 327 (1946). The Commission denied the petition for the following reasons:

1. The petition failed to meet the condition for filing under Rule 102 which requires that:

> "When the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief. . . and stating the reasons therefor may be served and filed."

The relief sought in the petition is covered by Rule 101 of the Rules of Practice. The petition did not meet the requirements of Rule 101 because the ETMF (Sub-No. 103) proceeding was administratively final when the petition was filed and Subsections (f) and (g) of Rule 101 enunciate Commission policy against entertaining successive petitions by the same parties upon substantially the same grounds as a former petition which has been

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considered and denied.

2. The applications of ETMF and Bell were filed one and two years, respectively, after oral hearings in the subject proceedings had been concluded and after the submission of original briefs.

3. The petitioners remained silent throughout the ETMF and Bell proceedings, speculating on the action of the Commission.

4. The subject applications embrace proposed services substantially different in territorial scope from the services proposed by ETMF and Bell.

Research has not disclosed a single case extending the Ashbacker doctrine to motor carrier operating rights proceedings. To the contrary, in Texas-Oklahoma Express, Inc., Ext.-Oklahoma Points, 110 M.C.C. 769, 773 (1969), the Commission declared that the Ashbacker doctrine does not ordinarily extend to such proceedings:

> "Applications for motor carrier operating rights ordinarily do not fall within the ambit of the doctrine established in Ashbacker Radio Corp. v. F.C.C., 326 U.S. 327 (1945), which dictates that, for procedural due process, contemporaneously filed conflicting applications before an administrative agency, such as applications for a radio station license before the Federal Communications Commission, must be consolidated for concurrent decision where the applications are for mutually exclusive authority. Applications for the same motor carrier operating rights, unlike applications for the same radio station license, are seldom mutually exclusive since the Commission may grant authority to any number of carriers to perform the same service, provided that a public need is shown therefor. See Great Western Packers Exp. v. U.S. and I.C.C., 263 F. Supp. 347 (D. Colo. 1966). The Commission's right to consider an application separately or in combination with other applications is a well established matter of administrative discretion, and the Commission's decision in this respect is based upon the concept of fairness of opportunity to all parties involved, the effective procedures of the Commission, and the public interest. Alterman Transport Lines, Inc., Ext. -



Hastings, Nebr., 94 M.C.C. 421, 423."

In Great Western Packers Express, Inc. v. United States, 263 F. Supp. 347, 350 (D. Colo. 1966), the Court concluded that it would be "stretching" the Ashbacker doctrine to apply it to the motor carrier applications involved, stating:

> "Clearly this is not a facility which can be granted to only one. Numerous truck lines operate economically in the same areas and in this instance each of the individuals has its own particular following in its individual area of influence. Moreover, the services to be rendered are not identical, nor are the cities or states sought to be served identical. Watkins and Curtis sought authority in several states. Furthermore, the Commission granted different authority to Curtis and Watkins from that granted to Digby."

Assuming, arguendo, that the applications were identical and one would be mutually exclusive of the other (which is exactly contrary to the facts), Ashbacker would not apply since the "cutoff date" recognized in Century Broadcasting Corp. v. F.C.C., 310 F.2d 864, has long since passed. In fact, any Ashbacker requirement for consolidation was met and fully satisfied when the ten applications involved in the subject proceeding were, in fact, consolidated.

Applications under Section 207 of the Interstate Commerce Act are not mutually exclusive since the Commission may grant authority to any number of carriers to perform service over any number of routes traversing the same and different cities, provided that a public need is shown therefor.

## THE PRIMARY CONSIDERATION OF THE COMMISSION

In Central Motor Lines, Inc. v. United States, 309 F. Supp. 336 (W.D.N.C. 1969), the Court considered facts analogous to this proceeding. There, the Court stated:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if

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> the Commission's decision has a rational basis, rather than to second guess the Commission itself. The primary consideration is the interest of the public - not the relative economic advantage of competing carriers."

The Court noted that the primary question before the Court was whether the decision of the Commission is:

> ". . . supported by substantial evidence on the record considered as a whole . . . free from errors of law . . . and . . . not so arbitrary or capricious as to constitute an abuse of discretion."

and that:

> "The Court's basic job is to weigh the sufficiency of the evidence and determine if the Commission's decision has a rational basis, rather than to second guess the wisdom of the Commission itself."

In Carolina Freight Carriers v. United States, 297 F. Supp 848 (1969), the plaintiff sought to set aside an order of the Commission granting a certificate to Alterman Transport Lines, Inc. to transport general commodities, with usual exceptions, between Charlotte, N. C. and Florida. The Court affirmed the Commission, noting:

> "The question before the three judge court is whether the order of the Interstate Commerce Commission is supported by substantial evidence upon a view of the record as a whole."

and stated that:

> "If public convenience and necessity are found by the Commission to justify more and more alert competition (which on the record is clearly shown by substantial evidence) it is not grounds for objection that some of the protesting carriers might lose revenue."

In Superior Trucking Company v. United States, 306 F. Supp. 872 (N. D. Ga. 1969), another court held that loss of profits to existing carriers was no justification for denying the introduction of superior, competing service. The Court stated:

> ". . . The implementation of a new common carrier service may well inject an additional competitive element into plaintiffs' business, but this in itself affords no grounds for refusal to grant the certificate or it would be difficult to ever secure a certificate for new service."



Our attention has not been directed to any finding of fact that does not have substantial support in the record. Rather, the principal thrust of plaintiffs' argument is that greater weight should have been given to some of the testimony and exhibits and less weight to some of the testimony and exhibits of applicants and shippers, and that overall they have been rendering a satisfactory service between the involved areas. As we have noted, the weight to be given the evidence is a matter principally for the Commission absent arbitrary action which is not reflected in this record. The second argument, if established, is not a bar to Commission approval of additional authority. In a recent case involving some of the parties to this proceeding, the United States Supreme Court in United States v. Dixie Highway Express, Inc., 389 U.S. 409, at 411-412 (1967), stated:

> "The Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service."

## FINDINGS OF FACT

On the basis of the record certified to this Court and following detailed briefs and argument, this Court finds that:

1. The Orders of the Interstate Commerce Commission in Bowman Transportation, Inc., Extension - Dallas, Texas, MC-94201 (Sub-No. 56); Johnson Motor Lines, Extension - Dallas, Texas, MC-106401 (Sub-No. 18) and Red Ball Motor Freight, Inc., Extension - Atlanta, Georgia, MC-22229 (Sub-No. 132), served January 24, 1972 and September 1, 1972 are supported by substantial evidence.

2. The findings of the I. C. C. in the cases cited in paragraph 1

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above that present and future public convenience and necessity require operation by these carriers, to the extent approved, is supported by substantial evidence.

3. The weight to be given to transit time studies of applicants, shippers and protestants was for the Commission, absent arbitrary action not here present.

4. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the subject proceeding.

5. The plaintiffs have not been denied due process nor have they suffered any prejudice by intervention of the 41 shippers, Lorch-Westway Corporation, et al.

6. The Orders of the Commission served January 24, 1972 and September 1, 1972 are due to be affirmed.

And the Court makes and applies the following:

## CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue of this action pursuant to 28 U.S.C.A., Sections 1336, 1398, 2321, 2325 and 2284.

2. The finding of the Commission under 49 U.S.C.A. Section 307 that the present and future public convenience and necessity require approval of the applications of Bowman Transportation, Inc., Johnson Motor Lines, Inc. and Red Ball Motor Freight, Inc. to the extent granted are supported by substantial evidence.

3. The Orders of the Commission served January 24, 1972 and September 1, 1972 were not arbitrary, capricious or an abuse of discretion.

4. The Orders of the Commission in this proceeding served January 24, 1972 and dated September 1, 1972 satisfy the requirements of 49 U.S.C.A. Section 307 and the Administrative Procedure Act.



5. The Commission applied the proper standards to the evidence of record and adequately explained the basis for its decision.

6. The Commission acted within its discretion in denying ABF's petition for leave to intervene in and for reconsideration of the proceeding.

7. Plaintiffs have not been denied due process nor have they suffered prejudice by intervention of the 41 shippers allowed by the Commission and this Court.

8. The Orders of the Commission served January 24, 1972 and served September 1, 1972 in this proceeding are due to be affirmed.

9. The weight to be given transit time studies of applicants, shipper witnesses and protestants, absent arbitrary action not here found, was for the Commission and its findings with respect thereto where supported by substantial evidence.

WHEREFORE, an order is being entered today dismissing the complaint of plaintiffs and vacating the temporary restraining order.

SO ORDERED. This ___ day of , 1973.

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## APPENDIX I

Plaintiff's Proposed Findings of Fact and Conclusions of Law served August 16, 1973

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IN THE

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

CIVIL ACTION

No. FS 72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., MERCURY MOTORS, INCORPORATED, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC., PLAINTIFFS,

ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC. OF MISSISSIPPI and JACK COLE-DIXIE HIGHWAY COMPANY, INTERVENING PLAINTIFFS,

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS,

JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., BOWMAN TRANSPORTATION COMPANY and LORCH-WESTWAY CORPORATION, et al., INTERVENING DEFENDANTS.

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs and intervening plaintiffs respectfully submit that the Court should adopt the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

A. NATURE OF PROCEEDING.

1. This is an action to set aside orders of the Interstate Commerce Commission, issued in accordance with its decision in Herrin Transportation Company, Extension - Atlanta, Ga., 114 M.C.C. 571 (decided Dec. 30, 1971) granting extensions of operating authority to three motor common carriers, Red Ball Motor Freight, Inc. [Red Ball], Bowman Transportation, Inc. [Bowman], and Johnson Motor Lines, Inc. [Johnson]. The authority granted authorized such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specified points, generally in the Southeastern and Southwestern portion of the United States. The proceeding is brought pursuant to 28 U.S.C. §§ 1336, 1398, 2284, 2321-25.

B. PARTIES.

2. Each plaintiff and intervening plaintiff is a motor common carrier that participated in the proceeding before the Interstate Commerce Commission as a protestant in opposition to one or more of the applications granted by the Commission. Two of the plaintiffs, namely, Arkansas Best Freight System, Inc. [ABF] and Mercury Motors, Incorporated [Mercury], maintain their principal offices and places of business within the Western District of Arkansas, Fort Smith Division.

3. The action was brought against the United States, pursuant to 28 U.S.C. § 2322. The Interstate Commerce Commission was also named as a defendant. 28 U.S.C. § 2323.

4. The successful applicants before the Commission, Red Ball, Bowman and Johnson, intervened as defendants. Also intervening as defendants in support of Johnson were a group of shippers that had appeared as witnesses before the Commission on behalf of the Johnson



application and who, subsequently, were permitted by the Commission to intervene in support of that application. The interventions here were pursuant to 28 U.S.C. § 2323.

C. PRELIMINARY MATTERS.

5. Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

6. After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., [Jones], on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension - Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before this Court.

D. PROCEEDINGS BEFORE THE COMMISSION.

7. In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the

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applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

8. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D. C., Atlanta, Ga., Dallas and Houston, Tex., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

9. A total of 66 rail and motor carriers entered appearances



in opposition to the applications. Forty-eight of the protestants offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969 - twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the extended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.

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13. Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14. Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15. Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of ABF and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension - Atlanta, Ga., supra.

16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration,



whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

C. THE EXAMINERS' REPORT.

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

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18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communties along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal. A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points,



particularly the more distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.

20. Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their [illegible]mary of the evidence presented by thirty-three witnesses who s[illegible]or receive

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clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found;

> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p. 6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their



delivery requirements." The Examiners considered significant the fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

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". . . Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were - - selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportion service by protestants, applicants, as well as other carriers. They also reflect instances of good service.

. . .

"The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the



Commission, however, the Examiners noted that:

"Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies . . . must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals

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would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that a diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points . . . which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffice from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:



> "The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).
>
> ". . . remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31)
>
> ". . . the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

D. THE EXCEPTIONS.

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

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E. THE DIVISION REPORT.

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of the supporting witnesses' needs in these proceedings . . . can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36. It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings . . . of the Hearing Officers . . . but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson Brief, p. 21; Government Brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the



report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37. The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

38. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2) (A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

> 1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

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2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.

3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of



testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

41. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriatness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have

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disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42. The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments,



and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in an appendix; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took

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official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however, the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

46. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering



the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations herproposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers."

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Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

48. As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49. In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50. The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [44]In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co.--Ext.--Lake Mills, Wis., 111 M.C.C. 425 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611.

51. The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52. The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53. The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

F. OTHER MATTERS.

54. Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55. The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested

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parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier can normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating ". . . with that authority previously granted . . . wherein applicant is authorized to serve points in . . ." and named sixteen (16) states and the District of Columbia. The states of Illinois, Indiana and Ohio were not named in the Federal Register Publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the



authority sought in the present proceeding to authority subsequently acquired. Subsequent to the publishing of the "Notice", Bowman acquired Alabama Highway Express which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the Alabama Highway Express purchase and that acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register Publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

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CONCLUSIONS OF LAW

1. This Court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed. 2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This Court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States (1966) 256 F.Supp. 257, 264; Reddish v. United States (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed. 2d 147. As this Court stated in Patterson v. United States (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C. W.D. Mo. 1955, 134 F. Supp. 502."



3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing Court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States (Del. 1969) 301 F.Supp. 310, 319,"in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed. 2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed. 2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States (Mo. 1964) 231 F.Supp. 968, 970.

4. In Overton Park, supra, the Court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The Court cited L. Jaffe, Judicial Control of Administrative Action (1965).

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Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> ". . . Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work. . . ."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added). This terminology, and the above authorities, clear recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the Court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.

6. In making its decision "the court shall review the whole record or those parts of it cited by a party . . . ." 5 U.S.C. § 706. Although some question concerning the Court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:



> ". . . This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear. . . ." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this Court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The Court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Examiners' report as well as to the findings embodied in the Division's report, as we are required to do under Universal Camera Corp., supra.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this Court to confine its review to a determination of the substantiality of such portions of the

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evidence. The Court rejects this suggestion. Our duty is to review "the record in its entirety . . . including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U. S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States (W.D. Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925 (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board (1 Cir. 1964 , 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by



protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C., at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

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14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." Mary Carter Paint Co. v. F.T.C. (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. MC&D Moving & Storage Company v. United States (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the Court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States (D.C. Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U. S. Sup. Ct. Oct. 24, 1972. In its first decision the Court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged. . . . and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D. Pa. 1954)."



In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no countervailing evidence" as to their representativeness. This Court agrees with the Court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

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18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R. R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The Court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were



made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La. (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo. (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

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To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers



would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the Court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set forth in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The Court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The Court relied upon Eastern and Nashua Motor Express, Inc. v. United States (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the Court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the Court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the Court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

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prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta (1966) 100 M.C.C. 482, but in that case the Commission found that:

> ". . . most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that



reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the Court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record would have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the orders of the Interstate Commerce Commission issued in Docket No. MC-1124 (Sub No. 206), styled Herrin Transportation Company Extension - Atlanta, Ga., to the extent that they authorize the

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issuance of certificates of public convenience and necessity to Red Ball Motor Freight, Inc., Bowman Transportation Company and Johnson Motor Lines, Inc., be, and are hereby, set aside and declared to be void.



**APPENDIX J**

Order and Judgment of the United States District Court for the Western District of Arkansas, Fort Smith Division, in Arkansas-Best Freight System, Inc., et al v. United States of America and Interstate Commerce Commission and Red Ball Motor Freight, Inc., et al, entered September 11, 1973.

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IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., An Arkansas Corporation, MERCURY MOTORS, INC., an Arkansas Corporation, ALAMO EXPRESS, INC., BRASWELL MOTOR FREIGHT LINE, INC., CAMPBELL SIXTY-SIX EXPRESS, INC., CENTRAL FREIGHT LINES, INC., ET&WNC TRANSPORTATION COMPANY, EAGLE MOTOR LINES, INC., GORDONS TRANSPORTS, INC., HOLLOWAY MOTOR EXPRESS, INC., MERCURY FREIGHT LINES, INC., RED ARROW FREIGHT LINES, INC., RED LINE TRANSFER & STORAGE COMPANY, INC., T.I.M.E.-DC, INC., TRANSCON LINES, YELLOW FREIGHT SYSTEM, INC., | ) | |
| Plaintiffs, | ) | |
| ROADWAY EXPRESS, INC., ROADWAY EXPRESS, INC., OF MISSISSIPPI, JACK COLE-DIXIE HIGHWAY COMPANY, | ) | |
| Intervening Plaintiffs, | ) | |
| v. | ) | NO. FS-72-C-65 |
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, | ) | |
| Defendants, | ) | |
| RED BALL MOTOR FREIGHT, INC., JOHNSON MOTOR LINES, INC., BOWMAN TRANSPORTATION, INC., LORCH-WESTWAY CORPORATION, | ) | |
| Intervening Defendants. | ) | |

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J U D G M E N T

On this 11th day of September, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

U. S. District Court
Eastern Dist. Arkansas
FILED
SEP 11 1973
[illegible], Clerk
By [illegible] Deputy Clerk



IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
SEP 11 1973
[illegible], Clerk
By [illegible] Deputy Clerk

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ET&WNC TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v. No. FS-72-C-65

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

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JOHN E. MILLER, Senior District Judge

The plaintiffs, 19 in number, bring this action to set aside, vacate, suspend, enjoin and annul that portion of the order of the Interstate Commerce Commission (ICC) that authorizes the issuance of a Certificate of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132), to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56), and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18) (hereinafter referred to as Red Ball, Bowman and Johnson, respectively, or applicants collectively). The applications were consolidated with others under Docket No. MC-1124 (Sub-No.206) which was initially entitled "Herrin Transportation Company, Extension-Atlanta, Ga.," and was re-entitled "McLean Trucking Company, Extension-Atlanta,Ga."

This action was commenced pursuant to 28 U.S.C.A. § 1336, conferring jurisdiction upon this court, and §§ 2284 and 2321 through 2325, inclusive, of said Title, together with 49 U.S.C.A. §§ 305(g), 305(h), and 5 U.S.C.A. §§ 701 through 706, the Administrative Procedure Act, all providing for the procedure herein.

Venue exists under 28 U.S.C.A. § 1938, since plaintiffs Ark ansas-Best Freight System, Inc., and Mercury Motors, Inc., are residents of and maintain their principal offices and places of business in Fort Smith, Arkansas.

On October 12, 1972, Red Ball, upon motion was allowed to intervene as a party defendant, and on October 12 it filed its original answer, and on December 4, 1972, filed its first amended answer. In the first amended answer, it alleged that the Commission entered an order on October 6, 1972, denying the petitionsof plaintiffs seeking a finding that an issue of general transportation importance is involved in the proceeding.





On October 12, 1972, the court, upon motion, allowed Johnson to intervene as a defendant, and on the same day it filed its answer in which it denied that certain of the plaintiffs had appeared as protestants in opposition to the granting of the operating authority applied for by it.

On October 25, 1972, Bowman, upon motion, was allowed to intervene as a defendant, and on the same date it filed its answer, in which it alleged that certain of the plaintiffs did not file a petition for reconsideration in the proceedings.

On October 31, 1972, the court, upon motion, granted Roadway Express, Inc., and Roadway Express, Inc., of Mississippi permission for leave to intervene as plaintiffs.

On November 1, 1972, the court allowed a group of shippers, 41 in number, who had appeared as witnesses before the Commission on behalf of the Johnson application, to intervene in support of the application.

On December 4, 1972, defendants USA and ICC filed their joint answer.

On January 2, 1973, the court, upon motion, granted Jack Cole-Dixie Highway Company leave to intervene in support of the plaintiffs' complaint.

The authority granted Red Ball, Bowman and Johnson authorizes such carriers to extend their existing operations in the transportation of general commodities by motor vehicle over regular routes between specific points, generally in the Southeastern and Southwestern portions of the United States. Each plaintiff and intervening plaintiff is a motor carrier that participated in the proceedings before the Commission as a protestant in opposition to one or more of the applications granted by the Commission.

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Promptly after the filing of the complaint, a hearing was held before Senior District Judge John E. Miller on plaintiffs' application for a temporary restraining order suspending the operation of the Commission's orders pending a final hearing and determination of this action. The temporary restraining order was issued pursuant to 28 U.S.C.A. § 2284(3). Arkansas-Best Freight System, Inc. v. United States, 350 F.Supp. 539 (1972).

After extensive briefs had been filed by all parties, plaintiffs sought to supplement their complaint so as to seek review of orders of the Commission issued subsequent to the filing of the initial complaint. The subsequent orders granted operating authority to a fourth motor carrier, Jones Truck Lines, Inc., on its application heard as a part of the consolidated proceeding that resulted in the issuance of authority to Red Ball, Bowman and Johnson. Jones Truck Lines, Inc., Extension-Atlanta, Ga., 117 M.C.C. 586. The motion to file the supplemental complaint was denied, after a full hearing before the court. (Appendix A.)

In 1965, the Commission published notices describing the filing of a number of extensive motor carrier applications. Following a pre-hearing conference, ten out of twenty-one applications considered at the conference were selected for hearing on a consolidated record. These applications involved an extensive network of routes extending generally across the Southeastern and Southwestern portions of the country. Carriers operating predominantly in the Southeast sought to extend their operations into the Southwest. Carriers operating in the Southwest sought extensions into the Southeast. Most of the applications were filed within a short period of time and it is obvious that some were primarily defensive in nature. For example, applications by Southeastern carriers to serve major points in the Southwest were met





by applications by Southwestern carriers to operate over the same routes to serve points in the Southeast presently served by the Southeastern applicants. Initially, each applicant, including Red Ball, Bowman and Johnson, opposed the other applications that sought to duplicate their own routes, but in prosecuting their applications, the various applicants adopted different strategies. Some concentrated on their role as protestants in opposition to the others. Some, including Bowman (a Southeastern carrier), abandoned their role as protestants and concentrated on their role as applicants. Johnson (a Southeastern carrier) emphasized its role as applicant, but remained as a protestant in other proceedings. Red Ball (a Southwestern carrier) maintained its dual role of applicant and protestant throughout the proceeding, dividing its presentation of evidence accordingly.

f. The consolidated proceeding was assigned for hearing before two Hearing Examiners (now termed Administrative Law Judges) who conducted hearings over a period of eighteen months in Washington, D.C., Atlanta, Ga., Dallas and Houston, Texas., New Orleans, La., Kansas City, Mo., Tulsa, Okla., and Memphis, Tenn., such cities (other than Washington) being located on the various routes involved in the applications. The hearing resulted in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. at 573. The transcript of testimony covers 23,423 pages, and there are 1,989 exhibits. A total of 950 witnesses testified on behalf of the ten applicants, including 933 public witnesses engaged in shipping or receiving freight by motor carrier.

g. A total of 66 rail and motor carriers entered appearances in opposition to the applications. Forty-eight of the protestants

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offered evidence through the testimony of 62 witnesses and numerous exhibits.

10. Extensive briefs were filed before the Examiners. These briefs included two sets of detailed abstracts of the evidence, one submitted jointly on behalf of Bowman, Johnson and Jones; the other submitted jointly on behalf of various applicants and protestants, including Red Ball and plaintiffs. The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record.

11. The parties required seven months for the preparation of their post-hearing briefs, following which the Examiners issued their report and recommended order on November 19, 1969, twenty-seven months after the close of the hearing. The Examiners concluded that none of the applicants had established that its application was justified by the public convenience and necessity, concluding, instead, that approval of any of the applications would result in a deterioration rather than an improvement of existing carrier service, contrary to the public interest. They recommended, therefore, the denial of all applications.

12. On the day preceding the excended due date for the filing of exceptions to the Examiners' report, a petition was filed with the Commission in the name of forty-one shippers that had testified at the hearing in support of the Johnson application. This petition sought to intervene in support of Johnson and to file exceptions challenging the Examiners' denial of that application. Seven days later, before replies thereto could be filed, the Commission entered an order granting such petition and accepting such exceptions, nunc pro tunc. Vigorous objection to such action, advanced by numerous protestants, was subsequently denied by the Commission.





13. Eight applicants filed exceptions to the Examiners' report. Some protestants filed conditional exceptions, taking issue only with the failure of the Examiners to make certain findings of fact. Replies to the exceptions were filed by numerous parties.

14. Twenty-five months after the Examiners' report, Division 1, composed of three of the eleven Commissioners, issued a report granting the applications of Red Ball, Bowman and Johnson, and sustaining the Examiners' denial of the remaining applications. 114 M.C.C. 571. The grant to Bowman exceeded, in certain respects, the authority described in its application. The Commission, accordingly, required that an additional notice be published in the Federal Register describing such grant.

15. Pursuant to the Commission's Rules of Practice, extensive petitions seeking reconsideration of the Division 1 report were filed on behalf of numerous protestants and most of the unsuccessful applicants. Twelve working days after replies thereto were filed, all petitions challenging the grants to Red Ball, Bowman and Johnson were denied by a two-to-one vote of the Commission's Division 1, then acting in an appellate capacity. This order also overruled petitions of Arkansas-Best Freight and others, filed pursuant to the publication of notice of the Bowman grant, seeking leave to intervene, reopening for further hearing, and reconsideration in light of evidence to be adduced at the further hearing. The same order also denied the petitions of the unsuccessful applicants other than Jones, but reopened the Jones application for further consideration on the existing record. Subsequent to the filing of this suit, the same Division, again by two-to-one vote, reversed its prior decision and granted the Jones application with certain modifications. Jones Truck Lines, Inc., Extension-Atlanta, Ga., supra.

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16. The Commission's disposition of the Red Ball, Bowman and Johnson applications became administratively final with the entry of the order overruling protestants' petitions for reconsideration, whereupon this suit was promptly instituted by the leading protestant carriers. Subsequently, the Commission denied various petitions requesting the Commission to find on its own motion that the proceeding was one involving an issue of general transportation importance.

Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth.

## C. THE EXAMINERS' REPORT

17. All parties, in their briefs and pleadings, acknowledged that the Examiners were among the most experienced on the Commission's staff. Their 300-page report consisted of a summary of their findings and conclusions, together with a series of appendices embodying extensive, detailed findings of fact. As summarized in the Examiners' Report, the ten applicants proposed to extend their operations into new areas so as to handle traffic, in direct service, moving between





points that they presently serve and points that they propose to serve. Bowman and Johnson, for example, then operated primarily in the Eastern Seaboard states and sought to extend their operations over described routes so as to serve new points located west of their existing territory. The principal routes sought by Johnson extended from Atlanta to the Dallas-Ft. Worth area, and from New Orleans to Houston. Johnson sought to serve the principal cities along these routes in Mississippi, Louisiana and Texas. Bowman sought to extend its routes from Alabama to Dallas-Ft. Worth and to Houston, duplicating basically the Johnson proposal, and, in addition, proposed other routes extending across Mississippi, Arkansas and Missouri, with the northern route terminating at Topeka, Kansas. Red Ball's existing authority extended over large areas in the Southwest. It sought to extend its routes from Jackson and Greenville, Mississippi, eastward to Birmingham and Atlanta. The application of the other Southeastern carriers basically duplicated that of Johnson, and the applications of the remaining Southwestern carriers basically duplicated that of Red Ball.

18. None of the applicants proposed to provide service to any point not presently served by multiple motor carriers. Each sought only to provide additional service to that presently available. Each proposed a limited "overhead" type of service to the major cities only along their proposed routes on long-haul traffic moving to or from points presently served by each applicant. No "local" traffic [i.e., traffic from one point to another on the proposed routes] would be handled, and no service would be rendered to the smaller towns and communities along the proposed routes.

19. Each applicant presented "operating testimony" designed to demonstrate its willingness and ability to perform its proposal.

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A large number of shippers and receivers of freight were then presented to support applicants' contentions that there is a public need for the proposed service. Each applicant proposed to perform service within prescribed periods of time, referred to as "transit time." Each sought to establish that its proposed transit times are less than the transit times actually experienced by its witnesses in the shipping and receiving of freight. Most shippers generally expressed dissatisfaction with inconsistent and excessive transit times. They also expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points, primarily the smaller towns and off-route points in the area. Much of the traffic involved in the proposals moved over extremely long distances and throughout wide geographical areas. Bowman and Johnson, for example, operated from New England to the Southeast and proposed extensions into the Southwest and Midwest. Red Ball operated from as far west as Denver and proposed an extension to Atlanta. The proposals of other applicants were equally extensive. Although, between many points, direct or "single-line" service is available, most points, particularly the most distant points, are joined only by "joint-line" service involving an interchange or interline between two or more connecting carriers. Most of the criticism involving existing service centered around delays and uncertainties inherent in joint-line service. The applicants emphasized their proposal to reduce the amount of joint-line service required for the handling of movements between the involved points.





20. Approximately one-half of the Examiners' 300-page report consisted of detailed findings of fact based upon the evidence presented by the public witnesses. These findings were grouped or separated by the Examiners in accordance with the various types of freight shipped by the witnesses. The commodities involved in such testimony covered a wide spectrum, as evidenced by the Examiners' classification of such freight into forty-five categories. Although, on exceptions, no party challenged the accuracy of any finding of fact embodied in the Examiners' report, certain applicants contended that the Examiners' method of grouping their findings in this manner prevented such evidence from receiving "adequate consideration and treatment in relation to the territories and points involved." 114 M.C.C. at 591. The method used by the Examiners, however, was consistent with the method used by counsel for applicants and protestants in their respective abstracts of the evidence presented to the Examiners. It was also consistent with the order of the Commission establishing a special procedure for the presentation of such evidence, which order required the use of modified written statements including for each witness a "description of traffic and special transportation requirements, if any." Consideration of shippers' testimony by commodities has been followed in other proceedings. Compare, United Parcel Service, Inc., Common Carrier Application, 68 M.C.C. 199, 203.

21. Typical of the Examiners' findings is their summary of the evidence presented by thirty-three witnesses who ship or receive clothing, the first commodity category considered in their report. After setting forth detailed findings concerning the testimony of each of these witnesses, the Examiners found:

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> "These 33 Clothing witnesses are not without available transportation services. Their support is based upon the inadequacies of those services. For the most part their shipments are in small lots and the product is seasonal in its salability. Inventories necessarily are limited because of economic considerations. Orders often are of an emergency nature such as to meet a certain advertised sale, or are reorders of depleted stock. The availability, dependability and speed of transportation service are very real factors in determining the competitive position of these shippers in a particular market area. Yet, many of these witnesses are not familiar with the existing transportation services available, have not tried the joint-line services of the carriers they support for single-line service nor the services available from other carriers, are using joint-line services at times when single-line is available, and few have made any real efforts to solve their transportation problems. To a large degree the schedules proposed by the particular applicant supported form the bases of their support." (Examiners' report, App. C, p.6)

22. Similar findings were next made concerning witnesses who shipped or received piece goods, textiles, toweling, thread and yarn. The varying transportation requirements of the different shippers is illustrated by the Examiners' findings relative to the next group, those interested in the movement of signs, displays, and showcase equipment. The Examiners pointed out that the support of these shippers "is based primarily upon the assumption that single-line service is better than connecting line service and that the elimination of interchanges between carriers will solve most of their problems merely by reduction in the amount of in transit handling of their shipments." The Examiners pointed out, however, that this assumption "is not justified," because movements "even between points on the lines of a single carrier, may well involve a considerable amount of consolidation and break-bulk distribution between origin and ultimate destination." In addition, it was pointed out that under the applicants' proposals, interline service will still be required "to accomplish a substantial portion of their delivery requirements." The Examiners considered significant the





fact that the shippers sought primarily to substitute one service for another "in lieu of the abundant existing services which are available to them but which they have made no attempt to utilize even though in many instances the unused or little used routings would appear on their face to be more advantageous." The Examiners concluded their discussion of this testimony by stating that "The territory here considered is provided with an abundance of transportation facilities." (Examiners' report, App. C, p. 23).

23. Similar findings were made as to each of the other categories of commodities shipped or received by the witnesses.

24. As noted, the applicants' proposals were predicated upon their contention that an improved quality of carrier service is needed by the public, and their presentation centered predominantly upon a comparison of their proposed transit time with the transit time experienced by their supporting shippers. They sought to establish the general pattern of existing transit time primarily through the presentation of shipping documents evidencing service rendered by existing carriers, summarized in "transit-time studies" presented as exhibits. The Examiners recognize that "shippers are entitled to transportation services which will enable them to move their merchandise or replenish their stock with the least delay and inconvenience consistent with economically and efficient operation of all transportation agencies serving their localities." (Examiners' report, p. 9). Since the ten applications were heard on a consolidated record, however, and since most [initially all] applicants also participated as protestants, the supporting evidence presented by each applicant normally placed in issue the quality of service rendered by other applicants. The Examiners termed this an "anomaly" (p. 10) attributable to the uniqueness of a single hearing involving

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overlapping proposals by multiple applicants. The Examiners found that most of the witnesses "voice some degree of dissatisfaction" with their existing transit times and summarized this aspect of their testimony as follows:

> " * * * Many of the public witnesses so complaining of slow and inconsistent service submitted abstracts of freight bills showing service they have received from some of the carriers used, including applicants, protestants and other carrier services. In some instances these bills were selected specifically to show poor service, or the abstracts were prepared from records of shipments upon which there had been some difficulty. In other instances they comprised only a few shipments made over a very extensive period of time; and in some instances the bills represented substantially all shipments in a given period between certain points or areas. It was not unusual for the witnesses to have permitted the applicant they supported to select the bills and prepare the abstracts. The transit time studies of these public witnesses reflect many instances of poor transportation service by protestants, applicants, as well as other carriers. They also reflect instances of good service.
>
> * * * *
>
> "The number of witnesses complaining of unsatisfactory transit time and inconsistency of service by the transportation agencies being used is impressive at first blush, but palls with analysis. While the many transit time studies of the supporting shipper witnesses reflect numerous instances of service deficiencies, the evidence also discloses that many of the same witnesses have made no investigation of the carrier services available nor experimented with the various combinations of available service to improve their transportation." (Examiners' report, pp. 10-11).

The Examiners noted that if shippers are genuinely concerned about the adequacy of carrier service, they would not continue to follow practices (beyond the control of the carriers) that cause or contribute to service deficiencies. Such practices, admittedly followed by the shippers, include (a) failure to investigate available service, (b) failure to experiment with different available services, (c) use of circuitous routes in lieu of available direct routes, (d) failure to specify routings available to





them, (e) the holding of shipments for periodic release, (f) use of slower water or rail service in lieu of faster available motor service, and (g) failure to use available services offered by the very applicants supported. The Examiners found that "little weight" could be accorded such shippers' professed need for improved service. (Examiners' report, pp. 11-12).

25. Considered collectively or ratably, the number of witnesses in the ten applications appears to be unusually large for proceedings of this type. Consistent with prior findings of the Commission, however, the Examiners noted that:

> "Almost every shipper is interested in getting his products to destination as economically and quickly as possible, and is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [Transamerican Freight Lines, Inc. - Purchase (Portion) - Allen Motor Lines, 59 M.C.C. 695, 722, reversed on other grounds, 65 M.C.C. 163], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur." (Examiners' report, p. 12).

26. The Examiners made extensive findings relative to the availability of existing service, such findings being predicated upon evidence presented by applicants and protestants. They noted that the "need to avoid monopolistic tendencies * * * must be balanced against the wasteful duplication of services and the creation of excessive capacity that would adversely affect the continuance of efficient operation by the existing carrier services." They found that "the benefits which may be realized by some few of the public witnesses supporting any of these applications are far outweighed by the serious adverse effect the granting of these applications, or any of them, may have upon existing carrier services." (Examiners' report, pp. 20, 22).

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27. These ultimate findings were supported by subordinate findings relative to resulting deterioration in specific service performed by individual carriers. They found that "the evidence leaves little doubt that some of the smaller carriers likely could not survive." One [Holloway], admittedly rendering adequate and satisfactory service, would likely lose 71 percent of its revenue as a result of a grant to Bowman. Another [Red Line], could be "put out of business." (Examiners' report, p. 20). The Examiners found that the services of the larger carriers would also be jeopardized. For example, one [Gordons] would be affected throughout its system with 58.5 percent of its total revenue being subject to diversion. Over 98 percent of its traffic at certain major terminals would be involved. (Examiners' report, App. D, p. 21). Similar findings were made as to other protestants.

28. The findings included other specific illustrations of adverse effects. As noted, the applicants proposed a highly selective "overhead" service to the major points only, rendering no service to the smaller points en route. The Examiners noted that diversion of traffic from such major points "will result in a deterioration of service at many of the smaller points * * * which are not proposed to be served directly by these applicants." (Examiners' report, App. D, p. 36).

29. The Examiners also noted that the traffic flow is imbalanced and that approval of the applications would aggravate this situation, to the detriment of efficient and economical operations. For example, they found that a further imbalance of Roadway's operations, now heavy westbound, would result from approval, and illustrated the importance of this by noting that: "During the first half of 1967 Roadway operated 157 vehicles empty from Texas





eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (Examiners' report, App. D, p. 45). It is noted that 157 empty trips during a 6-month period amounts to one each working day.

30. Throughout their report, the Examiners found that all criticisms of carrier service made by the witnesses was directed as much toward applicants as toward protestants and others.

31. Throughout their report, the Examiners also noted that many of the problems cited by the witnesses are directly attributable to practices followed by the shipping and receiving public, beyond the control of the carriers.

32. The Examiners concluded that approval would result in a deterioration rather than an improvement of service, and set forth specific findings concerning steps that could be taken to improve available service:

> "The solution to the instances in which the public has been subjected to poor transportation services in the circumstances here involved does not lie in the authorization of additional carrier services but rather in the exercise of more diligence and care by the carriers and shippers." (Examiners' report, p. 13).
>
> " * * * remedial procedures are available other than authorizing additional carriers in an area already served by an adequate number of carriers." (p. 31).
>
> " * * * the national transportation policy does not tolerate the conclusion that all shippers at all points are entitled to single-line service. The traffic involved is of major import to the economy and efficiency of a number of the existing carriers, and to their ability to continue an adequate service to the public under their certificates. Competition with its advantages must be balanced against wasteful duplication and the creation of excessive capacity that would adversely affect the continuation of efficient operations by existing carriers. Moreover, the applicants themselves provide important segments of the existing joint-line services available, and the evidence shows that the shippers could obtain better interline service by more careful attention to desirable routings and gateways and by more cooperation between the

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carriers. We conclude that the existing carrier services are adequate to meet the reasonable needs of the shippers, and that applicants' proposed services could not improve substantially thereon without materially diverting traffic from existing carriers to the detriment of their service and contrary to the public interest." (p. 32)

## D. THE EXCEPTIONS

33. Exceptions were filed by eight applicants. In addition, the Commission accepted the exceptions tendered on behalf of the Johnson shippers. All of these exceptions took issue with the Examiners' conclusions. Certain applicants also argued that the Examiners' method of grouping the shippers' evidence by commodities prevented the Examiners from obtaining a proper grasp of such evidence, and suggested that such findings should have been subdivided according to the geographical location of the witnesses. No exception was taken, however, to any specific finding of fact.

34. Extensive replies to exceptions were filed by protestants. Since applicants had not challenged any specific findings of the Examiners, the replies sought to demonstrate that the Examiners' conclusions were proper in the light of such findings.

## E. THE DIVISION REPORT

35. The Division differed with the Examiners in their conclusion that all applications should be denied, and ordered that the three here involved be granted and the others denied. At no point in its report did the Division reject any of the Examiners' findings of fact. However, the only findings of the Examiners expressly adopted by the Division were those relating to the protestants' evidence. As noted, more than half of the Examiners' report was devoted to specific findings based on evidence presented by the shippers. Noting the objections to the format of the Examiners' report, the Division stated that "a clearer picture of





the supporting witnesses' needs in these proceedings * * * can be presented by a grouping of the supporting evidence on a geographic basis." The Division "accordingly restated the supporting evidence" in an appendix to its report. 114 M.C.C. at 591.

36. It cannot be determined from the report whether the Division's "restatement" of such evidence indicates agreement with or rejection of the Examiners' findings. Protestants' efforts to obtain a clarification of the Division's report were unsuccessful. They now assert that the report is defective because of its vagueness and ambiguities, asserting that it fails to meet the requisites of the Administrative Procedure Act, 5 U.S.C. § 557(c). Plaintiffs' contentions find support in the conflicting assertions set forth in defendants' briefs. Under Johnson's interpretation, the Division's report "does not adopt the findings * * * of the Hearing Officers * * * but, instead, enters entirely new and different findings." Government counsel reads the Division's report differently, asserting that "the Commission's 'restatement' of the facts does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." (Johnson brief, p. 21; Government brief, p. 38). In its subsequent report on reconsideration in Jones, supra, the same Division "restated" its findings in the report now under consideration but made it clear that it did not intend thereby to alter such findings since they were expressly adopted. 117 M.C.C. at 590.

37. The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this

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issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599.

39. Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See, e.g., 114 M.C.C. 586.

2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.





3. The shippers' studies generally "comprised only a few shipments made over a very extensive period of time," whereas all protestants' studies included all shipments handled during the periods covered.

4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10).

39. Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered by protestants, and that protestants' service was, on the whole, reasonably expeditious.

40. Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be considered for the purpose of

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testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

41. The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted ex mero motu, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of





such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service on more than 120,000 shipments.

42. The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on protestants and their stated refusal to afford weight to protestants' service exhibits, is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's

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on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, that protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned.

43. After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignoring the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating





tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants.

44. Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued.

45. The shipper witnesses testified in support of ten separate applications heard on the consolidated record. In evaluating this evidence, the Division considered all evidence presented in support of the eight applications that were the subject of exceptions. 114 M.C.C. at 591, 592. In considering protestants' evidence, however,

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the Division compartmentalized such evidence based upon the application or applications specifically opposed by each carrier presenting such evidence. 114 M.C.C. at 605, 607, 609. The Division omitted entirely the Examiners' summary of all evidence presented by six carriers that had protested only the application of one of the carriers that had failed to file exceptions.

46. At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and





Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service.

47. The Division concluded that there is insufficient traffic "to sustain all of the additional motor carrier operations here proposed," and that "the authorization of all such services could lead to unhealthy, if not cut-throat, competition inimical to the public interest." 114 M.C.C. at 601. In concluding that three--and no more--applicants should be granted authority, the Division set forth no basis to support its conclusion that such action would not result in "the creation of excessive capacity and needless duplication of services which would tend to adversely affect the continuance of efficient operation by existing carriers." Although acknowledging this danger, as well as its own admonition "to avoid the proliferation of operating authorities not needed by the shipping public," the Division's conclusions were based upon its finding that, in early 1966, there was a "paucity of single-line motor carrier service available."

41 As noted, the Examiners found that the selective type of service proposed by applicants would result in a deterioration

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of service, primarily to the small communities proposed to be traversed but not served by applicants. This finding was carried forward in an appendix to the Division's report, but apparently received no consideration by the Division since it was not otherwise mentioned. 114 M.C.C. at 777.

49 In like manner, the Division adopted the Examiners' findings that approval would result in a further imbalance in traffic which would result in inefficient and wasteful transportation by increasing the extent of empty vehicle operations. 114 M.C.C. at 783. Again, however, this finding appears only in an appendix and apparently received no consideration by the Division.

50 The specific findings of the Examiners concerning the adverse effect upon protestant carriers were expressly adopted by the Division. However, such findings appear only in an appendix to the Division's report. In the body of the report, the Division reached conclusions incompatible with such findings. The Division did acknowledge that "undoubtedly" approval of all applications "might have serious adverse consequences on the existing motor carrier services." Next, after acknowledging the possibility of diversion, the Division disposed of this subject as follows:

> "With the exception of one carrier (Holloway), however, protestants have not shown that they would be seriously adversely affected[44] [[44]In this connection, it is noted that protestant United, one of the carriers the examiners indicated would be adversely affected, has been merged into a much larger carrier, Campbell, thereby rendering the issue as to the vulnerability of the former's operations moot.] by such grants, nor does it appear that the operations of any existing carrier would be impaired to such an extent that they would be unable to render service to the public in the future. Liberty Trucking Co. Ext.--Lake Mills, Wis., 111 M.C.C. 423 (1970). Whereas the operations of Holloway (which transports specified commodities in a limited territory) may be seriously adversely affected, the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience. 114 M.C.C. at 611."





51 The Division also failed to consider the admitted fact that many witnesses failed to voice any complaint or criticism, and many acknowledged the availability of satisfactory service. (See Summary, pp. 166-8, 171-2, plaintiffs' initial brief.)

52 The Division found that the principal indications of dissatisfaction related to existing joint-line service. 114 M.C.C. at 601-2. No acknowledgment was made, however, of the fact that much of such criticism was directed specifically to joint-line service presently provided by Red Ball, Bowman and Johnson. (See Summary, pp. 169-71, plaintiffs' initial brief.)

53 The Examiners made extensive findings concerning practices followed by shippers that cause or contribute to slow service, such practices being beyond the control of the carriers. (See Summary, pp. 172-3, plaintiffs' initial brief.) These facts were ignored by the Division.

## F. OTHER MATTERS

54 Plaintiffs contend that they were denied due process as a result of the intervention of the Johnson shippers. As noted, this intervention was granted before protestants had an opportunity to object. After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration.

55 The grant to Bowman, exceeding the scope of its application, was described in a Federal Register notice affording interested parties an opportunity to petition for reopening or reconsideration of that application. Several carriers, including ABF, filed timely petitions in response to the notice, based upon their interests

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in the Bowman grant, seeking reopening or reconsideration of the Division decision. These petitions pointed out that, while the application was pending, Bowman acquired extensive new authority, and the approved grant failed to contain any restriction preventing Bowman from performing service between points in this newly-acquired territory and points within its new grant. Since the original notice of the Bowman application specifically described its proposal to join its then existing authority with that sought, petitioners sought an opportunity to demonstrate the need for a modification or denial of the Bowman grant. These petitions were considered along with numerous petitions seeking reconsideration of the Division order. A total of 32 separate groups of petitions and replies thereto, some exceedingly comprehensive, were denied by a two-to-one vote of the same Division twelve working days after the last pleading was filed. (See Exhibit 5 to Complaint.)

56. Unless restricted voluntarily or by order of the ICC, a carrier normally can tack newly granted authority with that which it already holds, or with that subsequently acquired. Bowman limited its intention to tack the authority sought in the present proceeding to its then existing authority by the use of the following language as published in the Federal Register of Thursday, August 19, 1965, by stating " * * * with that authority previously granted * * * wherein applicant is authorized to serve points in * * *" and named sixteen (16) states and the District of Columbia. The States of Illinois, Indiana and Ohio were not named in the Federal Register publication. The published language constitutes a specific limitation regarding tacking which did not give notice to the public of any intention to tack the authority sought in the present proceedings to authority subsequently acquired. Subsequent to the publishing of the "Notice," Bowman acquired Alabama Highway Express





which allowed Bowman to serve points in Indiana, Illinois and Ohio. The grant of the authority in the present proceeding by the Commission, Division I, did not contain the limitation against tacking of the authority acquired in the present proceeding. Certain carriers had protested the Bowman application, but withdrew their protest based upon restrictive amendments proposed by Bowman and accepted by the Commission and based upon the limitations of the ability to tack as published in the Federal Register. These carriers, including ABF, sought a reopening, a reconsideration or a denial of the Bowman application, upon the republication required by the Commission because of the change in circumstances in which the Commission was granting more authority to Bowman than had originally been sought and for which notice had been given by the Federal Register publication. The ICC refused to reopen, reconsider or deny the Bowman application without hearing additional evidence based upon the allegations of the petitions filed subsequent to the proposed grant of authority to Bowman.

CONCLUSIONS OF LAW

1. This court has jurisdiction and venue to review this action of the Interstate Commerce Commission. 49 U.S.C. §§ 17(9), 305(g)-(h), 28 U.S.C. §§ 1336(a), 1398, 2284, 2321-25.

2. The limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law. Generally, an order of such an agency will be sustained if it is within the agency's statutory powers and is based on appropriate findings which in turn are supported by substantial evidence. If these criteria are met, the reviewing court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence.

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Consolo v. Federal Maritime Commission, 383 U.S. 607, 86 S.Ct. 1018, 16 L.Ed.2d 131; Universal Camera Corp. v. N.L.R.B., 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456; United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536, 66 S.Ct. 687, 90 L.Ed. 821. In Consolo v. Federal Maritime Commission, at 383 U.S., at 620, the Supreme Court emphasized that "[substantial evidence] is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." This court has clearly stated this principle on a number of occasions. Willis Shaw Frozen Express, Inc. v. United States, (1966) 256 F.Supp. 257, 264; Reddish v. United States, (1960) 188 F.Supp. 160, affirmed sub nom. Interstate Commerce Commission v. J-T Transport Co., Inc., 368 U.S. 81, 82 S.Ct. 204, 7 L.Ed.2d 147. As this court stated in Patterson v. United States, (1959) 178 F.Supp. 771, 774:

> "The Commission is the fact-finder, and the judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the administrative body. Southern Kansas Greyhound Lines v. United States, D.C.W.D. Mo. 1955, 134 F.Supp. 502."

3. In determining whether there is a rational basis for the conclusions reached by the administrative body, or whether its decision is based on appropriate findings supported by substantial evidence, the reviewing court must follow the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). As stated in Columbia Shippers and Receivers Ass'n, Inc. v. United States, (Del. 1969) 301 F.Supp. 310, 319, "in addition to the 'substantial evidence' test generally applicable to this action," the statute requires that the reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be "arbitrary,





capricious, an abuse of discretion, or otherwise not in accordance with law." (Emphasis added.) As recently stated in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 413, 28 L.Ed.2d 136, 91 S.Ct. 814, section 706 of the Administrative Procedure Act sets forth "six separate standards." Accord Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594; Mitchell Bros. Truck Lines v. United States, (Ore. 1963) 225 F.Supp. 755, 758, aff'd 378 U.S. 125, 12 L.Ed.2d 744, 84 S.Ct. 1657. See also, Campbell Sixty-Six Express, Inc. v. United States, (Mo. 1966) 258 F.Supp. 529; Nashua Motor Express, Inc.v. United States, (N.H. 1964) 230 F.Supp. 646; Omaha Grain Exchange v. United States, (Neb. 1961) 194 F.Supp. 929, 934; Stott v. United States, (N.Y. 1958) 166 F.Supp. 851, 855; Youngblood Truck Lines, Inc. v. United States, (N.C. 1963) 221 F.Supp. 809, 812, and Heavy-Specialized Carriers Conference v. United States, (Mo. 1964) 231 F.Supp. 968,970.

4. In Overton Park, supra, the court pointed out that in determining whether an agency decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. The court cited L. Jaffe, Judicial Control of Administrative Action (1965). Professor Jaffe, with reference to "abuse of discretion," states, on page 586 of his text:

> "* * * Broadly stated an abuse of discretion is an exercise of discretion in which a relevant consideration has been given an exaggerated, an 'unreasonable' weight at the expense of others. The 'letter' has been observed; the 'spirit' has been violated. Discretion implies a 'balancing'; where the result is eccentric, either there has not been a balancing, or a hidden and mayhap improper motive has been at work."

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In Burlington Truck Lines, Inc., v. United States, (1962) 371 U.S. 156, 83 S.Ct.239, 9 L.Ed.2d 207, the court at page 245 of 83 S.Ct. said:

> "Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884, 72 S.Ct. 152, 153, 96 L.Ed. 662 (dissenting opinion). 'Congress did not purport to transfer its legislative power to the unbounded discretion of the regulatory body.' Federal Communications Comm'n v. RCA Communications, Inc., 346 U.S.86, 90, 73 S.Ct. 998, 1002, 97 L.Ed.1470. The Commission must exercise its discretion under § 207(a) within the bounds expressed by the standard of 'public convenience and necessity.' Compare id., at 91, 73 S.Ct. at 1002, 97 L.Ed. 1470. And for the courts to determine whether the agency has done so, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271. The agency must make findings that support its decision, and those findings must be supported by substantial evidence. Interstate Commerce Comm'n v. J-T Transport Co., 368 U.S. 81, 93, 82 S.Ct. 204, 211, 7 L.Ed.2d 147; United States v. Carolina Freight Carriers Corp., 315 U.S. 475, 488-489, 62 S.Ct. 722, 729, 86 L.Ed. 971; United States v. Chicago, M., St.P. & P.R. Co., 294 U.S. 499, 511, 55 S.Ct. 462, 79 L.Ed. 1023."

5. Section 706(2)(A) requires the reviewing court to set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (Emphasis added.) This terminology and the above authorities clearly recognize that the determination of these issues involves a question of law. Since these requirements are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion.





6. In making its decision "the court shall review the whole record or those parts of it cited by a party * * *." 5 U.S.C. § 706. Although some question concerning the court's duty to review the whole record existed prior to enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N.L.R.B., supra. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

> " * * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried. Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." Judicial Control of Administrative Action, at 601.

7. The record in this proceeding is exceedingly large; however, all portions are not relevant to the Red Ball, Bowman and Johnson applications, and this court's review has been aided by the comprehensive abstracts filed on behalf of the parties. The court has also given careful consideration to the comprehensive findings of fact embodied in the appendices to the Examiners' report and to the Division's report. No challenge was made by any

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party to the accuracy of these findings of fact and, collectively, they present a comprehensive summary of the evidence.

8. The Commission, acting through one of its Divisions, was not bound by the findings of fact made by the Hearing Examiners. 5 U.S.C. § 557(b). In this case, however, the Division did not reject any of the Examiners' findings and the Commission's counsel asserts that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated." In our review, therefore, we have given consideration to the findings embodied in the Division's report as well as to the findings embodied in the Division's report. This procedure was fully discussed in Universal Camera Corp., supra, where the court at page 496 of 340 U.S. said:

> "We do not require that the examiner's findings be given more weight than in reason and in the light of judicial experience they deserve. The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree. We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other facts which in sum determine whether evidence is 'substantial.'"

See, also, Bituminous Material & Supply Co. v. N.L.R.B., (8 Cir. 1960) 281 F.2d 365.

9. Defendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division. Defendants urge this court to confine its review to a determination of the substantiality of such portions of the





evidence. The court rejects this suggestion. Our duty is to review "the record in its entirety * * * including the body of evidence opposed to the Board's view." Universal Camera Corp., 340 U.S., at 488.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States, (W.D.Mo. 1966) 258 F.Supp. 529.

11. In addition, the Division's report fails to meet the requisites of clarity. 5 U.S.C. § 557(c). In the words of Justice Cardozo: "In the end we are left to spell out, to argue, to choose between conflicting inferences." United States v. Chicago, M., St. P. & P. R. Co., 294 U.S. 499, 510-11, 55 S.Ct. 462, 79 L.Ed. 1023. A court cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." S.E.C. v. Chenery Corp., 332 U.S. 194, 197, 67 S.Ct. 1575, 91 L.Ed. 1995. The ambiguity of the report is best illustrated by the Division's treatment of the principal findings of the Examiners. They were neither adopted nor rejected, approved nor disapproved. Counsel for the government says the Division meant one thing, but counsel for Johnson disagrees. But even if counsel agreed, "[e]xplanations proffered in briefs at the appellate level are not an adequate substitute for a reasoned explanation of the result reached in the decision itself." N.L.R.B. v. International Union of Operating Eng., Local 925, (5 Cir. 1972), 460 F.2d 589, 604. As stated in Northeast Airlines, Inc. v. Civil Aeronautics Board,

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(1 Cir. 1964) 331 F.2d 579, 586: "Courts ought not to have to speculate as to the basis for an administrative agency's conclusion."

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes aribtrary and capricious action.

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified





shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case. Mary Carter Paint Co. v. F.T.C., (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States, (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical, established standards in presenting their traffic studies, and if such standards are to be changed, the parties were

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entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States, (D.C. Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 88 S.Ct. 689 (1968); Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1972) 1972 Fed. Carr. Cas. ¶ 82,305, case dismissed, U.S. Sup. Ct. Oct. 24, 1972. In its first decision the court stated:

> "Certainly when carriers appear before the Commission, they are entitled to know by what standards they are going to be judged * * * and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases - Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooks Matlack, Inc. v. United States, 119 F.Supp. 617 (E.D.Pa. 1954)."

In Ringsby, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in Ringsby that there was no rational basis for such action.

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman can perform the type and quality of service proposed (p. 586), but the identical exhibits were found to have no probative value when cited by protestants to support their challenge that Bowman cannot perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.





17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence.

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division.

19. As stated in Baltimore & O. R.R. v. United States, 264 U.S. 258, 265, 44 S.Ct. 317, 320, 68 L.Ed. 667, 674:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal

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described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied.

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to





protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.

The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension - Baton Rouge, La., (1969) 108 M.C.C. 485, 489, and Ayers, Extension - Cheyenne, Wyo., (1965) 99 M.C.C. 795, 797. West is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta andBaton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision.

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West was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West.

22. "While the Courts cannot be concerned with the consistency or inconsistency of the conclusions and findings of the Commission, 'consistency of administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.'" HC&D Moving & Storage Company v. United States, 298 F.Supp., at 751, quoting from Dixie Highway Express, Inc. v. United States, (S.D. Miss. 1967) 268 F.Supp. 239, 241.

23. The Division found that "protestants have not shown that they would be seriously adversely affected by such grants." This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report. These findings include specific facts showing that the grant of one or more of the applications would result in the serious deterioration of existing service rendered by numerous carriers. The Division found that service to small communities would be curtailed. It also found that carriers would be confronted with an increase in empty vehicle operations, a situation obviously detrimental to efficient and economical service. These are not averments or contentions advanced by





protestants; they are specific facts found by the Examiners and by the Division. The Division's conclusion is contrary to such findings.

24. The present situation is similar to that before the court in Campbell Sixty-Six Express, Inc. v. United States, supra. In that case, as in the case at bar, neither the Commission nor the parties raised any question as to the accuracy of findings of fact set fortn in the Examiner's report. On exceptions, however, the same Division of the Commission reached a conclusion contrary to that of the Examiner. The court there recognized the limited scope of judicial review but, at the same time, acknowledged the admonition of Eastern Central Motor Carriers Ass'n v. United States, (D.C. 1965) 239 F.Supp. 591, 594, that "the Court must review the record without a rubber stamp approach." The court relied upon Eastern and Nashua Motor Express, Inc. v. United States, (N.H. 1964) 230 F.Supp. 646. Recognizing that the terms "arbitrary" and "capricious" mean "without rational basis," the court concluded that the findings of fact of the Examiner "incontrovertibly demonstrate to this Court" that the conclusions reached by the Division were not justified. In declaring void the Commission's order, the court stated that "we have a situation where facts as found by the Examiner and adopted by the Commission simply do not supply any rational basis" for the Commission's conclusion. Since the Commission's "ultimate conclusion" was not based upon "adequate subordinate findings," the court found that such conclusion was "in the legal sense, 'arbitrary and capricious.'" These findings are fully applicable to the case at bar.

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with

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prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension - Atlanta, (1966) 100 M.C.C. 482, but in that case the Commission found that:

> " * * * most of the service deficiencies relating to transit times about which the supporting shippers and receivers complain and which are reflected in their service exhibits are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise." 100 M.C.C. at 493.

Thus, in Braswell, the Commission criticized protestants for failing to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they did present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States, (Tex. 1960) 186 F.Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419,81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was "evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications." There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications.

26. The Commission acted within its discretionary powers in permitting the Johnson shippers to intervene and file exceptions. However, the Division should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues.

27. The Division's rejection of the petition of ABF and others, seeking reopening and reconsideration of the Bowman





application, does not appear compatible with the Federal Register notices describing such application. The summary rejection of these and other petitions, by a two-to-one vote of the same Division that reversed the Examiners, indicates a rigid predisposition to uphold the prior decision. The additional publication of the Bowman grant was thereby treated as a meaningless formality.

28. Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. Although the court acknowledges the Commission's right to assign proceedings for disposition before its three-member Divisions, it is difficult to understand why this, the largest case of its kind in Commission history, was ultimately disposed of by a two-to-one vote of the same Division that rendered the initial decision. It is noted that the dissenting vote was recorded by a Commissioner who was not a member of the Division at the time of the initial decision. When the petitions were filed, however, he reviewed the record and "became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications." 117 M.C.C. 586, 597.

29. There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of "the present or future public convenience and necessity." For this reason, and because the findings and conclusions of the

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Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

Judgment is being entered today permanently suspending, annulling and setting aside the orders of the Interstate Commerce Commission issued in Docket No. 1124 (Sub-No. 206) styled Herrin Transportation Company, Extension - Atlanta, Ga., to the extent that said orders authorize the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); declaring said orders to be void; and permanently restraining and enjoining the Commission from issuing said Certificates of Public Convenience and Necessity.

This ___ day of September, 1973.

Pat Mehaffy
United States Circuit Judge

JNO. E. MILLER
U. S. Senior District Judge

PAUL X. WILLIAMS
United States District Judge





APPENDIX A

Status of Jones Truck Lines, Inc.

Jones Truck Lines, Inc. (Jones), MC-111231 (Sub-No. 67) filed on June 14, 1965, its application for extension of its present authority (1) between Atlanta, Ga., and Texarkana, Ark., (and intermediate points between Birmingham and Greenville, Miss., and on U.S. 82 in Arkansas); (2) between Texarkana, Ark., and Sherman, Texas, (and all intermediate points); (3) between Birmingham, Ala., and Memphis, Tenn., (no intermediate points); and (4) between Texarkana, Ark., and Dallas, Texas (all intermediate points). Service was restricted against the movement of traffic to or from Memphis, Tenn., and its commercial zone, but not on traffic moving through Memphis and its commercial zone on the one hand, and on the other, points east of the Mississippi River.

Throughout the hearings in the consolidated applications, Herrin Transportation Co., MC-1124 (Sub-No. 206), Jones, Bowman and Johnson were commonly referred to as "The Trinity," and filed with the court a joint abstract of the evidence in behalf of "The Trinity," containing seven large volumes. The application was submitted to the Hearing Examiners along with the other nine applications, and all were denied on the ground that the applicants had failed to establish that the present or future public convenience and necessity require the operations proposed in their respective applications.

In reviewing the report and recommendations of the Hearing Examiners, served Nov. 19, 1969, Division 1 at page 601 of Exhibit 1 to the original complaint, stated: "(c) there is not, in our opinion, sufficient traffic to sustain all of the additional

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motor carrier operations here proposed, and (d) the granting of all the applications would, as a consequence, materially endanger or impair the operations of existing carriers (and of applicants themselves) contrary to the public interest."

In its findings of fact the Commission at page 612 found that Jones, along with other applicants, had failed to establish the present and future public convenience and necessity, and that the applications should be denied. Accordingly, on December 30, 1971, the Commission granted only the applications of Red Ball, Bowman and Johnson, and denied all others.

Jones petitioned the Commission to reopen the hearing, and on September 6, 1972, the petition was granted and the application reopened for further hearing. In the petition Jones contended that there is a need for some additional services and that the volume of traffic shown to be moving would not sustain the added services and operations proposed by eight applicants; that Jones' application should be granted either in addition to those granted, or in lieu of the grant of authority to Red Ball; that that in choosing Red Ball over Jones, the Commission failed to appreciate that the two carriers served different areas; that Jones received more support from connecting carriers than any of the other applicants; that only nine carriers remain as active protestants to the Jones application, and that these are nine of the largest carriers in the United States, and therefore a grant of authority to Jones would not materially affect their operations, and that the grants to Red Ball, Bowman and Johnson without a grant to Jones "strikes a death blow to one of the oldest carriers in the Midwest Central South."





A number of protestants replied to Jones' petition, and charged that the thrust of Jones' petition is that a grant of its application should be based upon the number of witnesses produced rather than upon probative evidence of public need or adequacy of existing service.

Upon the reconsideration, the Commission on December 6, 1972, decided that its order of December 30, 1971, denying the application should be set aside and Jones should be granted authority with certain restrictions.

It is interesting to note that according to Exhibit 1 to the original complaint, Division 1 of the Commission was composed of Commissioners Murphy, Deason and Gresham. Division 1, acting as an Appellate Division, on the date the former report and order were considered, was composed of Commissioners Murphy, Hardin and Gresham. The order of December 6, 1972, reveals that Commissioner Hardin dissented. In his dissent he stated:

> "Commencing with my initial review of the record in the consolidated Herrin case, which review occurred prior to the entry of the September 1, 1972, order [the order in which an Appellate Division denied and disposed of certain pleadings as therein set forth] referred to in footnote 5 to the majority report, I became convinced that the consolidated proceeding should be reopened for the purpose of denying all the applications. Therefore, I did not approve the September 1, 1972, order. Further, I did not approve the entry of the October 2, 1972, order, also referred to in footnote 5, wherein a majority of the Commission determined that this massive consolidated proceeding involving 'what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission,' did not involve issues of general transportation importance.
>
> "I remain of the opinion that the applications of Red Ball, Bowman, and Johnson granted in the Herrin case should be denied. Most certainly, the record will not support the grant of any authority to Jones. Accordingly, I dissent."

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On June 29, 1973, the plaintiffs filed their motion in this court for leave to serve and file a supplemental complaint pursuant to Rule 15(d), Fed.R.Civ.P. In the motion plaintiffs referred to the allegations contained in their original complaint filed October 5, 1972, and the prayers for relief contained therein; that subsequent to the filing of the original complaint, the ICC had caused to be issued three additional orders which affect and are material to the issues in this cause. The purpose of the supplemental complaint was to bring before the court for review the subsequent orders and reports issued by the Commission, and for the same relief against the defendants as prayed for in the original complaint, and seeks to set aside, vacate, suspend, enjoin and annul those orders subsequently entered in Docket No. MC-111231 (Sub-No. 67) that would authorize the issuance of an additional Certificate of Public Convenience and Necessity as described therein. A copy of the proposed supplemental complaint was attached to the motion, which contains various allegations and plaintiffs' contentions, and prays that the court issue a temporary restraining order to remain in force and effect until a hearing and determination by the court, and to prevent the report and orders of the Commission from becoming final and effective; to prevent the Commission from issuance of a Certificate of Public Convenience and Necessity to Jones, and that upon a final hearing and determination of the action, that the Commission be permanently enjoined and prohibited from issuing of the Certificates to successful applicants, or in the alternative, that the matter be remanded to the Commission for appropriate action under the applicable facts and law.





On the same day the motion was filed, the court ordered that a full hearing on the motion and other incidental questions that may arise therein or therefrom be held at Fort Smith, Ark., beginning at 10:00 a.m. on Tuesday, July 24, 1973. On July 16, 1973, a motion of intervening defendant Jones was filed to dissolve the temporary restraining order; to convene a three-judge court to hear and determine plaintiffs application for preliminary injunction and motion to file supplemental complaint.

On July 19, 1973, Daisy Manufacturing Company and 69 others filed a motion to intervene as defendants, and if allowed to intervene, to oppose the motion to file supplemental complaint, and if supplemental complaint is allowed to be filed, that they be allowed to file a motion to dismiss the complaint, and to intervene to oppose granting of any temporary restraining order against the issuance of the Jones certificate, and if the court allows the filing of the supplemental complaint and they do not prevail upon their motion to dismiss, that they be allowed to file answer.

On July 23, 1973, Johnson also filed a pleading termed "Opposition to Plaintiffs' Motion to File Supplemental Complaint." On the same date, Red Ball filed its motion to dissolve the temporary restraining order entered November 7, 1972 (3[illegible] F.Supp. 545) and to grant plaintiffs' application for preliminary injunction and to dismiss the motion to file supplemental complaint.

Early on the day of the hearing, July 24, Bowman filed its objections to the motion of plaintiffs to file a supplemental complaint.

All of the motions and objections were argued orally by the attorneys for the various parties, and were submitted "upon the complete record heretofore filed in this case, together with

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all exhibits, briefs and arguments of counsel for the various parties." At the conclusion of the hearing the court entered an order denying the motion without prejudice.

Following the overruling of the motion of plaintiffs to file supplemental complaint, the attorney for Jones was allowed to and did withdraw all motions filed by intervenor Daisy Manufacturing Company.



**APPENDIX K**

Motion of the United States of America and the Interstate Commerce Commission for Amendment of Judgment and Memorandum in Support thereof filed September 17, 1973.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION Defendants, and RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR FREIGHT INC., and BOWMAN TRANSPORTATION INC., Intervening Defendants. | Civil Action No. FS-72-C-55 |

MOTION OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION FOR AMENDMENT OF JUDGMENT

Pursuant to Rule 59 of the Federal Rules of Civil procedure, the United States of America and the Interstate Commerce Commission move that the judgment, entered in this action on September 11, 1973, which sets aside orders of the Interstate Commerce Commission and, instead of remanding the proceeding, permanently enjoins the issuance of certificates of public convenience and necessity, be amended for the reason that such form of judgment is a matter beyond the jurisdiction of the Court in the circumstances presented.

The basis for this Motion is more fully explained in the Memorandum attached

Respectfully submitted,

THOMAS E. KAUPER
Assistant Attorney General

HOWARD E. SHAPIRO
Attorney
Department of Justice
Washington, D.C. 20530

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ROBERT B. JOHNSON
United States Attorney
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Attorneys for the United States of America

ARTHUR J. CLARA
Acting General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of September, 1973 I served true copies of the foregoing Motion Of The United States Of America And The Interstate Commerce Commission For Amendment Of Judgment on counsel for all parties of record by first-class airmail, postage prepaid.

SEYMOUR GLANZER



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION Defendants, and RED BALL MOTOR FREIGHT INC., JOHNSON MOTOR LINES, INC., and DOWMAN TRANSPORTATION INC., Intervening Defendants, | Civil Action No. FS-72-C-65 |

MEMORANDUM OF THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION IN SUPPORT OF THE MOTION FOR AMENDMENT OF JUDGMENT

This case involves the validity of orders of the Interstate Commerce Commission which authorized the issuance of three certificates of public convenience and necessity. The judgment of this Court, entered September 11, 1973, in accordance with its opinion of September 11, 1973, provides that, "the orders of the Interstate Commerce Commission . . . be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of Public Convenience and Necessity." We respectfully submit that, insofar as the judgment permanently enjoins the issuance of the certificates, it is beyond the power of the Court.

In its opinion, the Court explained its basis for not remanding the proceeding for further consideration by the Commission at Paragraph 29 of the Conclusions of Law. That paragraph reads as follows:

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> There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of the present or future public convenience and necessity". For this reason and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission.

We respectfully submit that it is beyond the province of the Court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity. Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., 379 U.S. 642, 543 (1965); United States v. Saskatchewan Minerals, 385 U.S. 94, 95 (1966).

The Supreme Court succinctly explained the "guiding principle" which governs judicial review of agency proceedings in Federal Power Commission v. Idaho Power Co., 344 U.S. 17, 20 (1952):

> the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration.

This precept fits this case-for it is well established that the legislative delegation to decide the issue of public convenience and necessity affords "administrative discretion to the Commission to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945).

The present case is like Arrow Transportation Co. v. Cincinnati, N.O. & T.P.R. Co., supra. There, too, the District Court had "set aside and permanently enjoined the operation, enforcement and execution" of a Commission order. The Supreme Court summarily vacated the judgment of the District Court



with instructions to the District Court to remand the case to the Commission for reconsideration in the light of the District Court determination.

We respectfully submit that under the "guiding principle" of the above cited cases, the judgment of this Court usurps the exercise of an essentially administrative function and thereby exceeds the authority of a reviewing Court. We suggest that the opinion be modified and the judgment be amended, substantially, as follows:

> The matter is remanded to the Commission for further proceedings consistent with this opinion.

Respectfully submitted,

THOMAS E. KAUPER
Assistant Attorney General

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SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 2423

Attorneys for the Interstate Commerce Commission

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of September, 1973 I served true copies of the foregoing Memorandum Of The United States Of America And The Interstate Commerce Commission In Support Of The Motion For Amendment Of Judgment on counsel for all parties of record by first-class airmail, postage prepaid

SEYMOUR GLANZER

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**APPENDIX I**

Notice of Appeal to the Supreme Court of the United States filed by Johnson Motor Lines, Inc. on September 27, 1973.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

U. S. District Court
Western District of Arkansas
SEP 27 1973
Clerk
Deputy Clerk

CIVIL ACTION NO. FS-72-C-65

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC., and
LORCH-WESTWAY CORP., et al.,

Intervening Defendants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Johnson Motor Lines, Inc., the intervening defendant named above, hereby appeals to the Supreme Court of the United States from the final judgment entered in this action on September 11, 1973.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully,

Donald B. Cross
918 - 16th Street, N.W.
Washington, D. C. 20006

Robert L. Jones, Jr.
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Johnson Motor Lines, Inc.

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## APPENDIX M

Notices of Appeal to the Supreme Court of the United States filed by Bowman Transportation, Inc. on October 2, 1973, from the Order entered on September 11, 1973, and on October 19, 1973, from the Orders entered on September 11, 1973 and October 4, 1973, separately and severally.

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IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., | ) | |
| PLAINTIFF, | ) | |
| -v- | ) | CIVIL ACTION NO. |
| | ) | FS-72-C-65 |
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, | ) | |
| Defendants, | ) | |
| RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al., | ) | |
| Intervening Defendants. | ) | |

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973, and October 4, 1973, separately and severally.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

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Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 17th day of October, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

804



IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | | |
|---|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al, | ) | |
| Plaintiffs, | ) | |
| -v- | ) | CIVIL ACTION NO. FS-72-C-65 |
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, | ) | |
| Defendants, | ) | |
| RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al, | ) | |
| Intervening Defendants. | ) | |

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that BOWMAN TRANSPORTATION, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Order entered in this cause by the Three-Judge District Court on September 11, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully,

MAURICE F. BISHOP
Bishop, Carlton & Sweeney
601-03 Frank Nelson Building
Birmingham, Alabama 35203

Attorney for Intervening Defendant,
Bowman Transportation, Inc.

805

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
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Memphis, Tennessee 38128

Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
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Interstate Commerce Commission
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John H. D. Wigger, Esq.
Department of Justice
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Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
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Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 30th day of September, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public





APPENDIX N

Order and Opinion of the United States District Court for the Western District of Arkansas, Fort Smith Division, filed October 4, 1973, overruling and denying the Motion of the United States and Interstate Commerce Commission for amendment of the judgment entered on September 11, 1973.

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IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

File

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
STEWART TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

No. FS-72-C-65

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

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ORDER

On this 4th day of October, 1973, in accordance with the opinion prepared and filed by the court in this cause,

IT IS ORDERED AND ADJUDGED that the motion of the United States and the Interstate Commerce Commission filed September 17, 1973, for amendment of the judgment entered on September 11, 1973, be and the same is overruled and denied.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk



IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
OCT 4 1973
E. A. Riddle, Clerk
By Deputy Clerk

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ALAMO EXPRESS, INC.,
BRASWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ET&WNC TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

No. FS-72-C-65

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOWMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Before MEHAFFY, Circuit Judge, and MILLER and WILLIAMS, District Judges.

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OPINION

JOHN E. MILLER, Senior District Judge.

On September 17, 1973, a motion was filed by the United States and the ICC seeking an amendment to the judgment so as to provide that the proceedings which are the subject of this suit be remanded to the ICC for further proceedings.

The sole reason assigned in support of the motion is that the form of judgment entered by this court "is a matter beyond the jurisdiction of the court in the circumstances presented."

In its original opinion of September 11, 1973, the court at page 47 in Section 29 of its Conclusions of Law concluded:

> "There must be an end to litigation. These applications have been pending since 1965, and the facts developed in this record have little bearing on a determination at this time of 'the present or future public convenience and necessity.' For this reason, and because the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served by remanding this matter to the Commission."

Accordingly the court entered a judgment declaring that the orders of the ICC authorizing the issuance of Certificates of Public Convenience and Necessity to Red Ball Motor Freight, Inc., in Docket No. MC-2229 (Sub-No. 132); to Bowman Transportation, Inc., in Docket No. MC-94201 (Sub-No. 56); and to Johnson Motor Lines, Inc., in Docket No. MC-106401 (Sub-No. 18); "be and they are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said Certificates of Public Convenience and Necessity."

The suit was filed in this court on October 4, 1972.

The prayer of the complaint is "that upon final hearing and determination of this action, judgment be entered to permanently





suspend, enjoin, annul and set aside the orders of the Defendant Commission herein complained of, and that this court enjoin and prohibit the Interstate Commerce Commission from issuing the Certificates of Public Convenience and Necessity to the so-called successful applicants, or, in the alternative, that the matter be remanded to the Defendant Commission for appropriate action under the applicable facts and law."

During the pendency of the action neither of the moving defendants nor any of the intervening defendants challenged or questioned in any way the jurisdiction and authority of this court to enter such an order. All of the defendants in their answers to the complaint took the position that the relief prayed should not be granted, and none of the defendants or intervenors contended that the complaint requested relief beyond the jurisdiction of the court.

The Interstate Commerce Act, 49 U.S.C., § 17(9), provides that when rehearing or reargument or reconsideration of any decision, order, or requirement of a Division shall have been denied by the Commission or an Appellate Division that a suit "to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise." This provision of the act was made applicable to motor carrier proceedings by 49 U.S.C., §§ 305(g) and (h).

The Administrative Procedure Act, 5 U.S.C., § 706, provides that the reviewing court shall "compel agency action unlawfully withheld" and "hold unlawful and set aside agency action,

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findings, and conclusions found to be * * * arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Title 28, U.S.C., § 1336(a), provides that the District Courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Title 28, U.S.C., § 2325, requires that an "interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission, be granted only by a three-judge court."

Soon after the suit was filed there was a hearing before a single Judge of this court, and a temporary restraining order was issued pursuant to 28 U.S.C., § 2284(3). Arkansas-Best Freight System, Inc., v. United States, (1972) 350 F.Supp. 539. No one contended at that hearing that the Judge was without authority to issue the temporary restraining order, and there is no statute which by its provisions prevents a three-judge court on a hearing on the merits from issuing a permanent injunction.

The movants argue that it is beyond the province of the court to bar the Commission from further consideration of the involved proceedings to determine where lies the public convenience and necessity, and cite and rely upon four cases in support of that argument. None of the cases reveal any extraordinary facts as does the present record. The cases relied upon by movants may be summarized as follows:

Arrow Transportation Co. v. Cincinnati, N.O. & T.P. R. Co., (1965) 379 U.S. 642, 85 S.Ct. 610, 13 L.Ed.2d 550. This case is clearly distinguishable. In Arrow the District Court entered an





opinion and order, 229 F.Supp. 572 (S.D. Ohio 1967), setting aside the agency order without giving any explanation whatsoever why the proceeding was not being remanded to the agency. In a per curiam opinion the Supreme Court directed that the proceeding be remanded to the Commission, citing only to Idaho Power Co., hereinafter discussed.

United States v. Sasketchewan Minerals, (1966) 385 U.S. 94, 85 S.Ct. 254, 17 L.Ed.2d 192. In this case the District Court did remand the proceeding to the Commission. 253 F.Supp. 504, 509 (W.D.Wis. 1965). However, its order of remand set forth unusually strict guidelines circumscribing the scope of the agency's consideration of the proceeding on remand. On appeal the Supreme Court stated that the District Court went too far, stating: "Under the circumstances present here, this restriction is an improper limitation on the Commission's duty to reconsider the entire case." 385 U.S. 95, 17 L.Ed.2d 193.

Federal Power Commission v. Idaho Power Co., (1952) 344 U.S. 17, 73 S.Ct. 85, 97 L.Ed. 15. This is the principal case relied upon by movants. A quotation from this case appears on page 2 of movants' memorandum, but it is significant to note that movants fail to point out that the statement quoted was characterized by the Court only as a "guiding principle." The statement is, by no means, an inflexible rule applicable to all proceedings. As hereinafter demonstrated, many cases recognize and apply the reciprocal of this "guiding principle," that is, that a remand will not be ordered unless it appears that it would serve a useful purpose in furtherance of the ends of justice.

Interstate Commerce Commission v. Parker, (1945) 326 U.S. 60, 65 S.Ct.1490, 89 L.Ed. 2051. This case has nothing to do with

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the issue now before the court. It deals only with the broad principles applicable to the Commission's basic determination of the issue of public convenience and necessity.

The court readily recognizes that, in a proper situation, a reviewing court should remand a proceeding to the Commission for further consideration and disposition by the Commission. The situation before this court, however, does not justify such action and, indeed, would not be consistent with orderly procedure nor would it furthe the ends of justice. The record in this case is voluminous. We are here concerned with the application of three carriers, whereas the record that would be sent back to the Commission on remand deals with the applications of ten carriers.

During the last arguments before the court, a member of the court asked counsel for defendant Johnson if large portions of the record were wholly unrelated to the applications before the court. Counsel acknowledged that this was correct. Indeed, there are tremendous portions of this record that are wholly unrelated to the applications of Red Ball, Bowman and Johnson. This is a unique situation resulting from the Commission's consolidation of ten major applications, and is a significant fact bearing upon the court's consideration of the Government's motion. The law requires the court to note and consider the uniqueness of the situation.

Since such a large part of the record is unrelated to these applications, a remand of this record would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity. In like manner, if a second court review should later be required, the reviewing court would then be confronted





with such a massive record, containing ancient facts, no feasible review of such record could be made.

The court's opinion makes it abundantly clear that the Commission could not, on this record, enter a valid order approving these applications. Accordingly, a new record is required before any valid grant of authority could be made to these carriers.

These applications were filed with the Commission in 1965 and the hearing began in 1966 and ended in 1967. As stated in the court's opinion (p. 47), "the facts developed in this record have little bearing on a determination at this time of 'the present or future public conv nience and necessity.'"

This court has concluded that the evidence of record before the Commission did not justify or support the Commission's grant of authority embodied in the orders reviewed by the court. That finding is not challenged by the motion now before the court. The motion suggests only that the proceeding must (not should) be sent back to the Commission. If this were to be done, the Commission would have before it an extensive record dealing with five and six year old facts. It is apparent, as a matter of law, that such facts could not lawfully support a finding of public need for additional motor carrier service in 1973 or 1974. As pointed out in the court's opinion, there has been a drastic change in circumstances since the record was closed in 1967. For example, evidence relating to service rendered in 1965 and 1966 by three single-line carriers between Atlanta and Dallas would be of no value whatsoever to a determination of the adequacy or inadequacy of service presently rendered by the 13 single-line carriers now authorized to operate between these cities. These facts are discussed on pages 26-27 and 42-44 of the court's opinion. Since, as pointed out on

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page 43 of the opinion, the Commission is obligated to consider recent grants of authority, no valid consideration of these applications could be made without giving effect to the extensive changes that have occurred since 1967.

If applicants Red Ball, Bowman and Johnson are still of the opinion that the present or future public convenience and necessity justify and require approval of their applications, the obvious answer is that they should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts.

The Government's motion states that this court's judgment of September 11, 1973, "permanently enjoins the issuance of certificates of public convenience and necessity." This, of course, is a misstatement of the court's action. The judgment referred specifically to the orders of the Commission in the proceedings identified by style and docket number and held that such orders "are permanently suspended, annulled and set aside, and are declared to be void; and the Commission is permanently restrained and enjoined from issuing said certificates of public convenience and necessity." (Emphasis added.) The only certificates referred to are those that were granted by the specific orders found by this court to be invalid. It is obvious that the Commission stands perfectly free to issue any certificates deemed by the Commission to be appropriate except the three certificates described in the Commission's orders that were set aside by the judgment. Red Ball, Bowman and Johnson stand perfectly free to file new applications tomorrow, and the Commission stands free to issue certificates of public convenience and necessity pursuant





to such applications without any restraint whatsoever by this court.

The Commission has long recognized the inappropriateness of considering a public-convenience-and-necessity application on the basis of facts that have only historical value. For example, in a proceeding involving an application to extend a rail line (which requires proof of public convenience and necessity, 49 U.S.C., § 1(18), (19)), the Commission stated:

> "We cannot see that any useful purpose would be served by a hearing at this time to permit the applicants an opportunity to endeavor to prove that, on the basis of the conditions as they existed in 1927, the issuance of the certificate was proper. Any conclusion we might reach would have to be based on the present and future public convenience and necessity.
>
> " * * * This action does not foreclose the filing of a new application and a hearing thereon at which evidence may be submitted as to whether the present and future public convenience and necessity require the construction which might be proposed." Waco, B., T. & S. Ry. Co. Construction, 254 I.C.C. 327, 337.

Upon a reversal by the court the question whether the proceedings should be remanded to the Commission for further consideration or whether the orders reviewed by the court should be set aside and held for naught depends upon the facts and the statutory scheme involved. In many cases the facts and circumstances as found by the reviewing court and verified by the record disclose that a remand is neither necessary nor proper. The circumstances and facts in the instant case as set forth in the court's opinion conclusively establish that this proceeding should not be remanded to the Commission, and a remand would only create further confusion and result in injustice.

In the consideration of the motion the court has examined several relevant decisions which, in view of the facts and circumstances, require that the motion be denied.

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In its opinion this court quoted with approval from the opinion written by District Judge Collinson in Campbell Sixty-Six Express, Inc. v. United States, (W.D. Mo. 1966) 258 F.Supp. 529. The decision in that case is particularly pertinent to the issues discussed by this court in its opinion. It is equally pertinent to the issue presented by the Government's motion. In Campbell the three-judge court was presented with a suit (filed by one of the plaintiffs herein) challenging the validity of an order entered by the ICC granting a Certificate of Public Convenience and Necessity to Roadway Express (another plaintiff herein). In that case, as in the case at bar, the Hearing Examiner denied the application, but a Division of the Commission, while recognizing the correctness of the Examiner's findings of fact, reached a contrary conclusion and granted Roadway's application. The court concluded that the Commission's action was "arbitrary and capricious" and directed that the order of the Commission be "set aside and declared to be void." There was no remand to the Commission, and there was no appeal. Roadway, the applicant in that proceeding, subsequently filed a new application with the Commission and, on the basis of a new and currently adequate record, obtained a certificate.

Pacific Coast Wholesalers' Ass'n v. United States, (S.D. Cal. 1949) 81 F.Supp. 991, was decided by a three-judge court. A suit was filed seeking to set aside an order of the ICC on the ground that there was no rational basis for the Commission's conclusions. The court recognized that "there is evidence of substance to support the Commission's findings of fact," but found the Commission's conclusions "have no rational basis and must be set aside." The exact form of the judgment was that "the same





are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined." The case was affirmed on appeal, 338 U.S. 689, 70 S.Ct. 411, 94 L.Ed. 474 (1950). In the per curiam opinion no mention was made of the form of the judgment entered by the District Court.

A similar result was reached in Shannon v. United States, 219 F.Supp. 781 (W.D. Tex. 1963), which was also affirmed on appeal, 377 U.S. 311, 84 S.Ct. 1260, 12 L.Ed.2d 341 (1964). In that case the three-judge court set aside an order of the ICC, using the following terminology:

> "There is not substantial evidence in the record upon which to base the Interstate Commerce Commission's findings and conclusions * * * defendants should be permanently enjoined from enforcing the terms of said order * * *."

In Carrett Freightlines, Inc. v. United States, (D. Idaho 1971) 324 F.Supp. 575, the three-judge court upheld the Commission's order, in part, and set it aside, in part, stating:

> "It is hereby ordered, adjudged and decreed that the order of the defendant Interstate Commerce Commission * * * granting certain changes in the Certificate of Convenience and Necessity of the applicant therein, be, and the same hereby is, vacated, annulled and set aside."

A similar result was reached in Ashworth Transfer, Inc., v. United States, (D. Utah 1970) 315 F.Supp. 199. And see Pennsylvania R.R. v. United States, (E.D. Pa. 1962) 202 F.Supp. 584, where the court permanently enjoined an order of the Commission which had cancelled a rate increase. No appeal was taken in Carrett, Ashworth, or Pennsylvania R.R.

Although the facts and circumstances are quite different, the case of Zuber v. Allen, (1969) 396 U.S. 168, 90 S.Ct. 314, 24 L.Ed.2d 345, clearly stands for the proposition that a remand to

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the administrative agency is not always required. That proceeding involved an order entered by the Secretary of Agriculture, and the District Court entered a permanent injunction. The Court of Appeals affirmed in an opinion that specifically noted that there was "no readon" to remand the proceeding. 402 F.2d. at 475. The Supreme Court affirmed and, on the question of remand, noted that: "Counsel for the Department has advanced no new theory for sustaining the order." 396 U.S. at 196, 24 L.Ed.2d at 362.

The result reached by the court in the consideration of the motion in the case at bar is fully supported by the reasoning in Office of Communication of the United Church of Christ v. Federal Communications Commission, (CA DC 1969) 425 F.2d 543. That proceeding involved an application by a television station for a renewal of its license. Initially, in a prior appeal, the Court of Appeals had remanded the cause to the Commission. In the case cited, however, the court set aside the Commission's grant of authority and held that an entirely new proceeding should be instituted by the Commission, instead of proceeding any further on the record that was reviewed by the court. In an opinion written by now Chief Justice Burger, the court stated:

> "The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." (Emphasis added.) 425 F.2d at 550.

It is most interesting to observe that the attitude of the Commission in the case above quoted was strikingly similar to the attitude of the Commission in the case at bar. It is also





interesting to note that, in directing the Commission to start over with a new record, the court used the identical terminology utilized by this court in its opinion of September 11, 1973, that is, that "no useful purpose" would be served by remanding the proceeding to the Commission for further review and consideration of the errors described in the court's opinion.

The jurisdiction and power of the reviewing court to set aside and permanently enjoin the enforcement of an order of the ICC was clearly recognized by the Supreme Court in American Trucking Associations, Inc. v. United States, (1960) 364 U.S. 1, 80 S.Ct. 1570, 4 L.Ed.2d 1527. Although the court did conclude that the case should be remanded to the Commission, the court clearly stated in its opinion why it deemed a remand appropriate, "under the particular circumstances of this case." 346 U.S. at 17, 4 L.Ed.2d at 1538. The court made it quite clear that no remand would have been ordered except for "the particular circumstances of this case."

The relationship of the reviewing court and the administrative agency was also discussed in Interstate Commerce Commission v. Atlantic Coastline R. Co., (1966) 383 U.S. 576, 86 S.Ct. 1000, 16 L.Ed.2d 109. There the court was concerned with the problem of when a carrier could file a suit for review of a Commission order under section 17(9) of the Interstate Commerce Act. It recognized that in some instances a remand to the Commission is required, but that in other cases, the court can finally dispose of the matter "without any necessity for a remand to the Commission. 383 U.S. at 601, 16 L.Ed.2d at 127.

Various other decisions also recognize that a reviewing court may or may not remand a proceeding to the Commission, after

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concluding that the agency's order is invalid. This was recognized, for example, in Williams v. Washington Metropolitan Area Transit Com'n, (CA DC 1969) 415 F.2d 922, 939-40. In that case the court concluded that remand would be "futile" or "manifestly unwarranted" due to "changed circumstances." In Washington Gas Light Co. v. Baker, (CA DC 1951) 195 F.2d 29, 35, the Court of Appeals held that the District Court went too far with its order of remand and directed the lower court to dispose of all of the issues that could be decided on the record before the court rather than referring such issues for decision to the Commission.

The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid. The motion does not contest the court's ruling that such orders are invalid, and, since such orders are invalid, their enforcement should be enjoined.

The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's prerogative to exercise its administrative functions.





The motion of the United States and the Interstate Commerce Commission filed September 17, 1973, is without merit and an order overruling and denying said motion is being entered today.

This 4th day of October, 1973.

United States Circuit Judge

U. S. Senior District Judge

United States District Judge

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**APPENDIX O**

Notice of Appeal to the Supreme Court of the United States filed by Red Ball Motor Freight, Inc. on October 10, 1973.

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

U. S. District Court
Western Dist. Arkansas
FILED
OCT 10 1973
E. A. Riddle, Clerk
By [signature]
Deputy Clerk

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al, Plaintiffs v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC., and LORCH-WESTWAY CORP., et al, Intervening Defendants. | CIVIL ACTION NO. FS-72-C-65 |

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RED BALL MOTOR FREIGHT, INC., an intervening defendant named above, hereby appeals to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973 and October 4, 1973.

This appeal is taken under and pursuant to 28 U.S.C. §§1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

[signature]
Sander W. Shapiro

Attorney for Intervening Defendant, RED BALL MOTOR FREIGHT, INC.

Of Counsel:

CLARK, THOMAS, DENIUS, WINTERS & SHAPIRO
P. O. Box 1148
Austin, Texas 78767

825

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
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Fort Smith, Arkansas 72901

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Phineas Stevens, Esq.
Post Office Box 22567
Jackson, Mississippi 39205

William O. Turney, Esq.
2001 Massachusetts Ave., N.W.
Washington, D. C. 20036

Donald E. Cross, Esq.
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Washington, D. C. 20006

Courts Oulahan, Esq.
Rhyne & Rhyne
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Associate General Counsel
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Maurice F. Bishop, Esq.
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Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D. C. 20423

This 8th day of October, 1973.

Sander W. Shapiro

SWORN TO AND SUBSCRIBED before me, a Notary Public, on the day and year aforesaid.

Notary Public, Travis County, Texas



**APPENDIX F**

Notice of Appeal to the Supreme Court of the United States filed by Lorch-Westway Corporation, et al, on November 5, 1973.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

IN THE [illegible] COURT FOR

THE WESTERN DISTRICT OF ARKANSAS

FORT SMITH DIVISION

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al., Plaintiffs, v. UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al., Intervening Defendants. | Civil Action No. FS-72-C-65 |

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that LORCH-WESTWAY CORP., et al.*, Intervening Defendants named above, hereby appeal to the Supreme Court of the United States from the Final Orders entered in this cause by the Three-Judge District Court on September 11, 1973, and October 4, 1973, separately and severally.

---

* Lorch-Westway Corp.; Simmons Co., Southern Division; Dunham-Bush, Inc.; Leff Brothers Dry Goods Co.; Seneca Textile Corp.; Morgan and Lindsey, Inc.; Western Textile Products Co.; Metal Trims, Inc.; Ero, Inc.; Capitol Bolt and Screw Co.; Olinkraft, Inc.; Jantzen Southern, Inc.; S. Klein (Division of McCrory Corp.); Monroe Wholesale Drug Co.; Ethyl Corp.; Hanna Barber & Beauty Supply Co.; Stayon Products, Inc.; American Greetings Corp.; Canteen Corp.; Campus Sweater and Sportswear Co.; Walgreen Co.; M. Lowenstein & Sons, Inc.; McNeil Laboratories, Inc.; Congoleum Nairn, Inc.; Her Majesty Underwear Co.; Avco-Bay State Abrasive Products Co., Tupperwear Co.; Louis Hand, Inc.; Carol Wire & Cable Corp.; Foxboro Co.; Dapol Plastics, Inc. and Worcester Toy Co., Inc.; Berkshire Hathaway, Inc.; Pennsylvania Dutch Co.; Shiny Brite Div. of Poloron Co. (formerly Max Eckardt & Sons, Inc.); Magla Products, Inc.; K S M Division of Omark Industries, Inc.; Warner-Chilcott Laboratories (Division of Warner-Lambert Co.); Monroe International, Inc. (Division of Litton Industries); Becton, Dickinson & Co.; American Cyanamid Co.; and Mississippi Bedding Co.

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This appeal is taken pursuant to 28 U.S.C. §§ 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States.

Respectfully submitted,

Charles S. Rhyne

Courts Oulahan

Rhyne & Rhyne
400 Hill Building, N.W.
Washington, D.C. 20006
(202) 347-7992

Robert L. Jones, Jr.

412 Merchants National Bank Building
Fort Smith, Arkansas 72901

Attorneys for Intervening Defendants
Lorch-Westway Corporation et al.

Of Counsel:

Jones, Gilbreath & Jones
412 Merchants National Bank Building
Fort Smith, Arkansas 72901



CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal upon all attorneys of record by mailing copies to them, first-class mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

Thomas Harper, Esq.
Don A. Smith, Esq.
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Post Office Box 22567
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Birmingham, Alabama 35203

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Associate General Counsel
Interstate Commerce Commission
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John H.D. Wigger, Esq.
Department of Justice
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Hon. Robert E. Johnson
United States Attorney
Post Office Box 1524
Fort Smith, Arkansas 72901

Fritz R. Kahn, Esq.
General Counsel
Interstate Commerce Commission
Washington, D.C. 20423

This 30th day of October, 1973.

Charles S. Rhyne

Sworn to and subscribed before me, the day and year aforesaid.

Notary Public

My Commission Expires March 31, 1977

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## APPENDIX Q

Notice of Appeal to the Supreme Court of the United States filed by the United States of America and the Interstate Commerce Commission on November 9, 1973.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

---

ARKANSAS-BEST FREIGHT SYSTEM, INC., an Arkansas corporation,
MERCURY MOTORS, INC., an Arkansas corporation,
ARLED EXPRESS, INC.,
BARWELL MOTOR FREIGHT LINE, INC.,
CAMPBELL SIXTY-SIX EXPRESS, INC.,
CENTRAL FREIGHT LINES, INC.,
ETKINS TRANSPORTATION COMPANY,
EAGLE MOTOR LINES, INC.,
GORDONS TRANSPORTS, INC.,
HOLLOWAY MOTOR EXPRESS, INC.,
MERCURY FREIGHT LINES, INC.,
RED ARROW FREIGHT LINES, INC.,
RED LINE TRANSFER & STORAGE COMPANY, INC.,
T.I.M.E.-DC, INC.,
TRANSCON LINES,
YELLOW FREIGHT SYSTEM, INC.,

Plaintiffs,

ROADWAY EXPRESS, INC.,
ROADWAY EXPRESS, INC., OF MISSISSIPPI,
JACK COLE-DIXIE HIGHWAY COMPANY,

Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants,

RED BALL MOTOR FREIGHT, INC.,
JOHNSON MOTOR LINES, INC.,
BOLEMAN TRANSPORTATION, INC.,
LORCH-WESTWAY CORPORATION,

Intervening Defendants.

Civil Action
No. FS-72-C-65

---

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

---

Notice is hereby given that the United States of America and the Interstate Commerce Commission, the defendants in the above-styled action, hereby appeal to the Supreme Court of the United States from the judgment of this Court entered

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

September 11, 1973 and the order of this Court entered October 4, 1973. This appeal is taken pursuant to 28 U.S.C. §§ 1253, 2101.

The entire record in this action is hereby designated for certification and the Clerk of the District Court is requested to prepare and transmit the entire record to the Clerk of the Supreme Court of the United States.

This the 5th day of December, 1973.

THOMAS E. KAUPER
Assistant Attorney General

ROBERT E. JOHNSON
United States Attorney
Fort Smith, Arkansas 72901

JOHN H. D. WIGGER
Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for the United States of America

[illegible]
General Counsel

ARTHUR J. CERRA
Deputy General Counsel

DUTY JO CHRISTIAN
Associate General Counsel

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423

Attorneys for the Interstate Commerce Commission



PROOF OF SERVICE

I, Seymour Glanzer, one of the attorneys for defendant Interstate Commerce Commission, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the [illegible] day of November, 1973, I served copies of the foregoing Notice of Appeal on the several parties to this action as follows:

1. On the plaintiffs and intervening plaintiffs herein, by mailing copies in duly addressed envelopes to attorneys of record as follows:

With first-class postage prepaid to Drew L. Carraway, Esq., Rice, Carpenter and Carraway, 510 Perpetual Building, 111 E Street, N.W., Washington, D.C. 20004.

With first-class airmail, postage prepaid to Thomas Harper, Esq. and Don A. Smith, Esq., Harper, Young & Smith, P.O. Box 43, Fort Smith, Ark. 72901; Robert S. Joyner, Esq., Joyner, Goff & Sims, 2008 Clark Tower, 5100 Poplar Ave., Memphis, Tenn. 38138; Phineas Stevens, Esq., Butler, Snow, O'Mara, Stevens & Cannada, 700 Petroleum Bldg., P.O. Box 22567, Jackson, Miss. 39205; Phillip Robinson, Esq., Robinson, Felts, Starcke & Nations, P.O. Box 4707, Austin, Texas 78757; Frank W. Taylor, Jr., Esq. and Kenworth E. Griffin, Esq., Roeder, Dysart, Sanders & Taylor, 1101 Baltimore Ave., Kansas City, Mo. 64105; M. Ward Bailey, Esq., Christopher, Bailey & Taylor, 2412 Continental Life Bldg., Fort Worth, Texas 76102, William O. Turney, Esq., 2001 Massachusetts Ave., N.W., Washington, D.C. 20036.

2. On intervening defendants herein, by mailing copies in duly addressed envelopes, to their respective attorneys of record, as follows:

With first-class postage prepaid to Donald E. Cross, Esq., Cox, Cross and Knebel, 700 World Center Bldg., 918 Sixteenth St., N.W., Washington, D.C. 20006, attorney for intervening defendant

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

Johnson Motor Lines, Inc.; Charles S. Rhyne, Esq., and Courts Oulahan, Esq., Rhyne & Rhyne, 839 17th St., N.W., Suite 400, Washington, D.C. 20006, attorneys for intervening defendants Lorch-Westway Corporation, et al.

With first-class airmail postage prepaid to Maurice F. Bishop, Esq., Bishop, Carlton & Sweeney, 501-09 Frank Nelson Bldg., Birmingham, Ala. 35203, attorney for intervening defendant Bowman Transportation, Inc.; Edward A. Clark, Esq., Jerry C. Prestridge, Esq., Donald S. Thomas, Esq., Clark, Thomas, Denius, Winters and Shapiro, P.O. Box 1148, Austin, Texas 78767, attorneys for intervening defendant Red Ball Motor Freight, Inc.; Robert L. Jones, Jr., Esq., Jones, Gilbreath & Jones, 412 Merchants National Bank Bldg., Fort Smith, Ark. 72901, attorney for intervening defendants, Johnson Motor Lines, Inc., and Lorch-Westway Corporation, et al.

SEYMOUR GLANZER
Attorney
Interstate Commerce Commission
Washington, D.C. 20423



**APPENDIX B**

Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements filed with the Clerk of the United States Supreme Court on November 12, 1973.

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IN THE SUPREME COURT

OF THE UNITED STATES

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

| | |
|---|---|
| UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION; BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; and LORCH-WESTWAY CORPORATION, ET AL., | ) |
| Appellants, | ) |
| -v- | ) APPLICATION NO. _____ |
| ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL., | ) |
| Appellees. | ) |

RECEIVED
NOV 12 1973
OFFICE OF THE CLERK
SUPREME COURT, U.S.

APPLICATION TO FIX TIME OR
FOR EXTENSION OF TIME TO
DOCKET CASE ON APPEAL AND TO
FILE JURISDICTIONAL STATEMENTS

Application is hereby made under Rules 13(1) and 34(2) of the Supreme Court of the United States by the Appellants, Bowman Transportation, Inc., Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc., and Lorch-Westway Corporation, et al. (Bowman, Johnson, Red Ball, and Lorch-Westway, respectively, and collectively, Appellants), to fix the time or for an extension of time to and including January 8, 1974, for the named Appellants to docket the case on appeal to this Court and to file jurisdictional statements.

The grounds in support of said request are as follows:

1. This case involves applications to the Interstate Commerce Commission (Commission) by the motor carrier Appellants (Bowman, Johnson, and Red Ball) under Title 49, Section 307 of the United States Code for extensions of their operating rights. The remaining Appellant, Lorch-Westway, is composed of a group of 41 intervening shippers who supported the need for additional motor carrier service. The applications were heard, considered,

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and determined by the Commission on a consolidated record. The applications of Bowman, Johnson, and Red Ball were approved by the Commission by Order served January 24, 1972, in Herrin Transportation Co., Extension - Atlanta, Georgia, 114 M.C.C. 571. Petitions for reconsideration were denied by Order of the Commission served September 6, 1972, following which, and on October 4, 1972, some of the protestant carriers filed a complaint in the United States District Court for the Western District of Arkansas, Fort Smith Division, under Title 28, United States Code, Sections 1336, 1393, 2284, and 2321 through 2325, inclusive, of said Title, and Title 49, United States Code, Section 305(g) through Section 305(h), and 5 United States Code, Sections 701 through 706, styled:

> Arkansas-Best Freight System, Inc., et al., Plaintiffs, v. United States of America and Interstate Commerce Commission, Defendants, Red Ball Motor Freight, Inc.; Johnson Motor Lines, Inc.; Bowman Transportation, Inc. and Lorch-Westway Corp., et al., Intervening Defendants, Case No. FS-72-C-65.

2. On September 11, 1973, the District Court entered a final Order and Judgment and declared the Order of the Commission approving the applications for extension of operating rights void and permanently restrained and enjoined the Commission from issuing the certificates of public convenience and necessity to Bowman, Johnson, and Red Ball.

3. On September 17, 1973, the United States and the Commission filed a Motion in the District Court seeking an amendment to the Judgment to remand the cause to the Commission for further proceedings. This Motion was overruled and denied by the District Court by Order entered October 4, 1973.

4. All affected parties have appealed to this Court on the following dates indicated[1/] from the Orders of the District Court under Title 28,

1/ The appeal of Johnson was from the Order and Judgment of the District Court of September 11, 1973. All other Appellants filed notices of appeal from the Orders and Judgments of the District Court entered September 11, 1973, and October 4, 1973.





United States Code, Sections 1253 and 2101, Rule 72 of the Federal Rules of Civil Procedure for the United States District Courts, and Rule 10 of the Supreme Court of the United States:

| Appellant | | Date Appeal Filed |
|---|---|---|
| Johnson Motor Lines, Inc. | | September 27, 1973 |
| Bowman Transportation, Inc. | and | October 2, 1973<br>October 19, 1973 |
| Red Ball Motor Freight, Inc. | | October 10, 1973 |
| Lorch-Westway Corporation, et al. | | November 2, 1973 |
| United States of America and Interstate Commerce Commission | | November 9, 1973 |

5. To conserve time and costs and to provide for uniformity and clarity, the Appellants jointly propose to file a consolidated Appendix containing all pertinent orders of the Commission and the Court, all notices of appeal and other pertinent documents in connection with their jurisdictional statements. This could not be accomplished until all appeals were filed. An earlier or separate printing of the Appendix would be wasteful duplication.

6. Appellants by this application respectfully seek to fix a uniform date to correspond with the notice of appeal taken by the United States of America and Interstate Commerce Commission to be fixed or extended to and including January 8, 1974.

7. Approval of this request will not delay submission or consideration of the jurisdictional statements since no extension beyond the time allowed under existing rules to the United States of America and Interstate Commerce Commission, as an Appellant, is requested.

For the foregoing reasons, it is respectfully submitted that the request to fix the time to docket this case on appeal and for filing jurisdictional statements to and including January 8, 1974, should be granted.

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Dated this 12th day of November, 1973.

Respectfully submitted,

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Attorney for Appellants,
Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Application to Fix Time or for Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

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Dated at Washington, D. C., this 12th day of November, 1973.

Sworn to and subscribed before me
the day and year aforesaid.

Notary Public

THIS REPRODUCTION FAITHFULLY
PROJECTS ORIGINAL COPY WHICH
WAS ITSELF UNREADABLE.

**APPENDIX S**

Request for Designation and Certification of the Record filed with the Clerk of the United States District Court on November 14, 1973.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

| | |
|---|---|
| ARKANSAS-BEST FREIGHT SYSTEM, INC., et al, Plaintiffs, -v- UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, RED BALL MOTOR FREIGHT, INC.; JOHNSON MOTOR LINES, INC.; BOWMAN TRANSPORTATION, INC.; and LORCH-WESTWAY CORP., et al, Intervening Defendants. | CIVIL ACTION NO. FS-72-C-65 |

U. S. District Court
Western Dist. Arkansas
FILED
NOV 13 1973
E. L. [illegible], Clerk
By [signature]
Deputy Clerk

REQUEST FOR DESIGNATION AND
CERTIFICATION OF THE RECORD

Pursuant to Rule 12 of the Supreme Court of the United States, the undersigned appellants respectfully request the Clerk of the above Court to certify the entire record and to provide for its transmittal to the Clerk of the Supreme Court of the United States. It is respectfully requested that the certification and transmittal include (a) the entire record as certified to this Court by the Secretary of the Interstate Commerce Commission, which includes the entire record before said Commission, and (2) the entire record before this Court, including, but not limited to, all pleadings and orders, the opinions and judgments entered on September 11, 1973 and October 4, 1973 and all notices of appeal. Pursuant to Rule 12(2), it is requested that there be transmitted with the record a numbered list of the documents, identifying each with reasonable definiteness.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

This 12th day of November, 1973.

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Attorney for Intervening Defendants, Lorch-Westway Corporation, et al.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 33 of the Supreme Court of the United States, I have served a copy of the foregoing Request for Designation and Certification of the Record upon all attorneys of record by mailing copies to them, first class mail, postage prepaid, and on all parties more than 500 miles distant (*) by air mail, postage prepaid, to the addresses shown by them in pleadings filed, as follows:

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Post Office Box 2207
Austin, Texas 78767

Dated at Washington, D. C. this 12th day of November, 1973.

Sworn to and subscribed before me,
the day and year aforesaid.

Notary Public

My Commission Expires September 30, 1976

THIS REPRODUCTION FAITHFULLY
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WAS ITSELF UNREADABLE.

**APPENDIX T**

Order of Hon. Harry A. Blackmun, Associate Justice of the Supreme Court of the United States, entered November 13, 1973, fixing the time for docketing appeals to and including January 8, 1974.

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

November 14, 1973

Maurice F. Bishop, Esquire
Bishop, Carlton & Sweeney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

RE: Bowman Transportation, Inc., John Motor Lines, Inc., Red Ball Motor Freight, Inc., & Lorch-Westway Corp., v. Arkansas-Best Freight System, Inc., et al., A-475

Dear Mr. Bishop:

Your application, which included the applications of counsel for other above-mentioned appellants, for extensions of time in which to docket appeals in the above-entitled case was presented to Mr. Justice Blackmun who, on November 13, 1973, signed an order extending your time to and including January 8, 1974.

A copy of the Justice's order is enclosed. Kindly advise opposing counsel of this action.

A copy of this letter together with a certified copy of the Justice's order is being sent to counsel for each of the above-mentioned appellants.

Very truly yours,

MICHAEL RODAK, Jr., Clerk

By Arthur G. Christean
Arthur G. Christean
Deputy Clerk

Enclosure

lab

cc: Donald E. Cross, Esq. - Enc.
Jerry C. Prestridge, Esq. - Enc.
Courts Oulahan, Esq. - Enc.
Thomas A. Harper, Esq.
Honorable Robert H. Bork

THIS REPRODUCTION FAITHFULLY PROJECTS ORIGINAL COPY WHICH WAS ITSELF UNREADABLE.

# Supreme Court of the United States

No. A-475

BOWMAN TRANSPORTATION, INC.,
JOHNSON MOTOR LINES, INC.,
RED BALL MOTOR FREIGHT, INC., and
LORCH-WESTWAY CORPORATION,

Appellants

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.

---

O R D E R

---

UPON CONSIDERATION of the application of counsel for appellants,

IT IS ORDERED that the time for docketing appeals in the above-entitled cause be, and the same is hereby, extended to and including January 8 -----, 1974.

/s/ Harry A. Blackmun
Associate Justice of the Supreme
Court of the United States

Dated this 13th day of November, 1973.

846

A true copy [illegible]
Attest:
Clerk of the Supreme Court of the United States
BY [illegible]
Deputy

Supreme Court, U. S.
FILED
FEB 22 1974
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1973

**Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072**

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

## APPELLEES' MOTION TO DISMISS AND AFFIRM

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

**Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072**

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

## APPELLEES' MOTION TO DISMISS AND AFFIRM

Appellees[1] in the above-entitled cases move to dismiss Case No. 73-1069 (Johnson Motor Lines, Inc., appellant) on the ground that the appeal has not been taken in time and to affirm all such cases on the ground that the questions presented are so unsubstantial as not to need further argument.

1. Arkansas-Best Freight System, Inc., Mercury Motors, Incorporated, Alamo Express, Inc., Braswell Motor Freight Line, Inc., Campbell Sixty-Six Express, Inc., Central Freight Lines, Inc., ET&WNC Transportation Company, Eagle Motor Lines, Inc., Gordons Transports, Inc., Holloway Motor Express, Inc., Mercury Freight Lines, Inc., Red Arrow Freight Lines, Inc., Red Line Transfer & Storage Company, Inc., T.I.M.E.-DC, Inc., Transcon Lines, Yellow Freight System, Inc., Roadway Express, Inc. and Jack Cole-Dixie Highway Company.

## QUESTIONS PRESENTED

(1) Whether the appeal in Case No. 73-1069 (Johnson) should be dismissed for lack of jurisdiction because it is based upon a notice of appeal that was filed while a motion to amend the judgment was pending before the lower court.

Many of the questions presented by certain appellants involve frivolous criticisms of the District Court's conduct. The remaining issues, which likewise do not present substantial questions for review, are restated as follows:

(2) Upon finding orders of the Interstate Commerce Commission, entered after a formal hearing, to be based upon findings and conclusions that were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, did the District Court, expressly following a provision of the Administrative Procedure Act, 5 U.S.C. § 706, err by holding such orders to be unlawful?

(3) Was it mandatory that the District Court remand this case to the Commission for further proceedings on the present record; or, if not mandatory, did the court properly decline to remand under the peculiar circumstances and development of the agency record?[2]

## STATEMENT OF THE CASE

This case involves a decision of the Interstate Commerce Commission disposing of applications by the three motor carrier appellants (Johnson, Red Ball and Bowman) that were before the Commission for more than seven

2. The only remand question raised in the court below, and therefore the only one properly before this Court, is whether remand was mandatory.



years. During this period, a massive expansion of carrier operations took place, with Commission approval.[3] Initially, there were 21 applications that sought major expansions of operating authority within the southeastern and southwestern portions of the United States. Ten, including the three here involved, were selected for hearing on a consolidated record before two of the Commission's most experienced hearing examiners (App. J 748).[4]

The Jurisdictional Statements outline the dates involved and the massive size of the record resulting from the consolidation of the ten applications. The examiners accurately summarized the voluminous evidence,[5] finding that there was no public need for the services proposed and that approval of any of the applications would result in a serious deterioration of existing service, contrary to the public interest. Their conclusions were predicated, in part, upon the fact that *none of the applicants proposed to supply service to any point or operate over any route that was not already adequately served by multiple carriers*. Instead, each proposed only to render a highly selective form of "overhead" operation, restricting their service to selected major cities. The examiners found that the carriers adequately serving the areas were dependent

3. At the time of the hearing, three carriers provided direct service between Atlanta and Dallas, focal points of the proceeding. At the time of the Commission's decision there were 13 such carriers. Similar expansions occurred without exception at every city involved (App. J 766). The court below was furnished with a detailed analysis from the record demonstrating the specific increases that occurred at 14 of the principal cities involved. Plaintiffs' Brief (District Court), pp. 142-145. ("App." refers to the Joint Appendix to Jurisdictional Statements filed by appellants.)

4. Now termed "Administrative Law Judges." For consistency, the title "examiners," used in the record, will be utilized here.

5. No party has ever challenged the accuracy of the examiners' summary of the evidence as set forth in their 300-page report (App. J 751, 758).

on volume traffic at the larger cities (that would be served by applicants) in order for them to maintain service to the smaller communities (that would not be served by applicants). They recognized that if any of the applicants were permitted to superimpose its proposed service on that presently provided, it would result in forcing existing carriers to increase the amount of their empty vehicle operations within the area. For example, one appellee (Roadway) was then operating at least one empty truck per day from Texas to the East Coast, due to traffic imbalance, while another (Gordons) was operating empty vehicles more than one million miles per year[6]—highly "inefficient and wasteful" conditions that would be worsened by approval of any of the applications (*id.*, at 756, 768).[7]

Most of the unsuccessful applicants filed exceptions, challenging the examiners' conclusions but not their specific findings of fact (*id.*, at 758). At this stage of the proceedings, additional counsel entered the picture and new parties were permitted to intervene, resulting in the injection of political issues and arguments (*id.*, at 769, 786).[8]

---

6. The facts are not in dispute. These findings were made by the examiners, by the division of the Commission that reviewed the findings, and acknowledged by the District Court (App. B 330, 345; App. J 756-757).

7. In view of the present energy crisis, the Commission recently reemphasized its long-standing policy of "minimizing or eliminating" empty vehicle movements. 38 Fed. Reg., No. 228, pp. 32856-7; No. 231, pp. 33355-6.

8. Appellants Lorch-Westway, *et al.* (Lorch) refer to contentions in one of their pleadings that was "never accepted for the record" to argue that the Commission did not, in fact, permit injection of political issues, as found by the court (J. S. 13-14, App. B). They failed, however, to cite their additional pleadings and briefs which argued that the Commission's implementation of the National Transportation Policy was contrary to policy positions taken by the President of the United States and the Department of Justice. See, e.g., Reply of Lorch to Petitions for Reconsideration, p. 5, and its Petition to Supplement Exceptions, p. 3; plaintiffs' Reply Brief (District Court), pp. 30-61.



The final administrative determination of the proceedings resulted in the reversal of the examiners' conclusions (but not their findings) as to three carriers (appellants here)[9] and the sustaining of their denial of the remaining seven applicants. This was by a two-to-one vote of a division composed of three of the eleven commissioners.[10] The eleven-member Commission declined to review this decision, holding that "no issue of general transportation importance is involved" (*id.*, at 748; J.S. Red Ball, App. B).

The present suit charged that the division's decision was invalid and prayed that the enforcement of its order be enjoined. In its opinion (App. J 739) the District Court summarized the division's report in detail and carefully set forth the reasons why it found the division's orders to be invalid. The court's opinion is clear and comprehensive. Briefly stated, the court concluded that there was no rational basis for the determinative findings and conclusions in the division's report. It found that the division arbitrarily and capriciously applied a discriminatory double standard, giving great weight to evidence

---

9. Direct Atlanta-Dallas service, provided by three carriers at the time of the hearing and by 13 at the time of the decision, would be increased by this order to 16. See note 3, *supra*. The division, in its report, gives no indication that it was aware of these increases in service, although it was advised of such increases and although it acknowledged generally its duty to consider increases occurring during the pendency of the proceeding (App. C 106).

10. A dissenting opinion, favoring the denial of all applications, appears as a part of a subsequent decision by the same division after reopening the proceeding for the purpose of approving the application of one more applicant, Jones Truck Lines, Inc. See *Jones Truck Lines, Inc., Extension—Atlanta, Ga.*, 117 M.C.C. 586, 597 (1972). Appellees, as plaintiffs below, sought to supplement their complaint so as to seek review of *Jones* as a part of the present case; however, the court overruled these efforts (App. J 744), and a separate suit challenging *Jones* is now pending before the District Court for the Western District of Missouri, Springfield Division.

favorable to the appellant carriers while ignoring or expressly refusing to give weight to the same or similar evidence favorable to appellees, and, in some instances, justifying its refusal to give credence to evidence favorable to appellees by stating reasons that were equally applicable to evidence, favorable to appellant carriers, upon which its critical conclusions were based."[11]

The court, therefore, set aside the Commission's orders and enjoined the issuance of the certificates authorized therein, concluding that the division's findings and conclusions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706 (2) (A). The court affirmatively refrained from expressing any opinion concerning the ultimate issue of public convenience and necessity, recognizing the Commission's exclusive prerogative to make such determination. When requested by post-judgment motion of the United States and Commission (United States) (App. K 795) to remand the proceeding to the Commission, the District Court concluded that the ends of justice would be best served by directing the Commission to make a determination of public convenience and necessity on the basis of a new record, holding that, under the peculiar circumstances of the case, further proceedings on the present record "would only create further confusion and result in injustice" (App. N 817).

---

11. Lorch charges the District Court with holding the examiners' conclusions to be "nonreviewable by the Commission," thereby changing "the statutory relationship between hearing examiners and their agency" (J.S. 4, 19). The charge is unsupported. It is also directly contrary to the court's careful description of its review. As explained, the court considered both the examiners' report and the division's report precisely as directed by *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951). (App. J 776).



## MOTION TO DISMISS APPEAL OF JOHNSON MOTOR LINES, INC., CASE NO. 73-1069

Appellees move to dismiss Case No. 73-1069 (Johnson), on the ground that this Court does not have jurisdiction over the appeal. Jurisdiction is lacking because the appellant failed to file a timely notice of appeal as required by 28 U.S.C. § 2101(b).

On September 11, 1973, the District Court entered its judgment (App. J 739-740), and on September 17, 1973, the United States timely filed a motion pursuant to Rule 59(e), F.R.C.P., seeking amendment of the judgment. The motion sought to have this case remanded to the Commission on the ground that the judgment was "a matter beyond the jurisdiction of the Court." (App. K 795). Subsequent to the filing of the motion to amend, but prior to a ruling on the motion, Johnson filed a notice of appeal on September 27, 1973, that resulted in the docketing of the above-numbered cause (App. L 801). On October 4, 1973, the District Court entered an order overruling and denying the motion for amendment of the judgment (App. N 807-808). Following entry of the order overruling the motion to amend judgment, timely notices of appeal were filed by all other appellants *except* Johnson (Apps. M, O, P, Q 803, 825, 827, 831).

The *only* notice of appeal filed by Johnson was that notice filed while the motion to amend judgment was pending.[12] Accordingly, at the time Johnson filed its no-

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12. Bowman also filed a notice of appeal while the motion was pending, but, unlike Johnson, Bowman filed a second notice of appeal after the motion was denied (App. M 803). All of the appellants recognize that Johnson sought to appeal only from the judgment of September 11, 1973, whereas all other appellants appealed from that judgment *and* the order of October 4, 1973 overruling the motion to amend (Application to Fix Time or For Extension of Time to Docket Case on Appeal and to File Jurisdictional Statements, App. R 836, n. 1).

tice of appeal, the judgment appealed from was not a final, appealable judgment.

Under almost identical circumstances, this Court, in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 177 (1944), sustained a motion to dismiss, stating:

> "The motion to amend the findings tolled the time to appeal if it was not addressed to 'mere matters of form but raised questions of substance' e.g., if it sought a 'reconsideration of certain basic findings of fact in the alteration of the conclusions of the court.' Leishman v. Associated Elec. Co., 318 U.S. 203, 205. An examination of the motion makes plain that matters of substance were raised. The appeal . . . was accordingly premature. Zimmern v. U.S., 298 U.S. 167."

Here the motion to amend, as in *Crescent, supra*, "raised questions of substance," for the District Court was asked on jurisdictional grounds to reverse its finding and conclusion that "no useful purpose would be served by remanding this matter to the Commission" (App. J 787-788).

Dealing with a comparable situation in *Zimmern* (cited in *Crescent*), this Court stated that, at the time the notice of appeal was filed, the operation of the judgment had been suspended "so that no appeal could be taken from it until it had been amended or confirmed." 298 U.S., at 169. See, *e.g.*, *Forman* v. *Davis*, 371 U.S. 178, 181 (1962); *Leishman* v. *Associated Wholesale Elec. Co.*, 318 U.S. 203 (1943); *Morse* v. *United States*, 270 U.S. 151 (1926). Considering it unnecessary to cite authority, this Court quite recently reaffirmed its well established position on this question, holding that "[a]ppellees' motion for reconsideration . . . suspended the finality of the judgment . . . until



the District Court's denial of the motion . . . restored it. Time for appeal thus began to run from [the denial of the motion]. . . ." *Communist Party of Indiana* v. *Whitcomb*, 2 U.S.L.W. 4129, 4130 (Jan. 9, 1974).[13]

In effect, Johnson has not filed that notice of appeal required by 28 U.S.C. § 2101(b) which allows the jurisdiction of this Court to attach. Therefore, the appeal in No. 73-1069 should be dismissed.

## THE QUESTIONS ARE NOT SUBSTANTIAL

### The District Court Heard Oral Argument from All Parties

Three appellants (Red Ball, Johnson and Lorch) argue that the court below improperly curtailed or refused to hear oral argument on the issues decided.[14] This is a frivolous contention. The first hearing was before Senior District Judge Miller on plaintiffs' application for a temporary restraining order, and at that time "[t]he questions involved were extensively and thoroughly argued orally." 350 F. Supp. 539, 541 (1972). Subsequently, the parties filed "extensive briefs" on the merits (App. J 744).[15]

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13. The principle applied by this court in the cited cases is embodied in Rule 4 of the Federal Rules of Appellate Procedure for the United States Courts of Appeals.

14. Johnson, for example, argues that the District Court "did not hear oral argument on the merits of the action," and that the court made plain "its belief that oral argument was unnecessary." (J.S. Johnson 6). Red Ball charges that only one judge heard any argument concerning the Red Ball case during the hearing for a temporary restraining order, that the arguments before the three-judge court did not deal with the merits of the case and, further, that this constituted a failure to comply with "a jurisdictional requirement" (J.S. Red Ball 19). Lorch quotes fragmentary phrases from the transcript in a way that suggests that the court *refused* to hear oral arguments (J.S. 7, 8).

15. Specifically, plaintiffs' initial brief comprised 220 pages. Defendants' five briefs exceeded 322 pages, with more than 600 pages of appendices and exhibits. Plaintiffs' reply brief covered 73 pages.

These briefs were submitted to each judge prior to the time the court convened to hear arguments on plaintiffs' motion to supplement the complaint and defendants' motion to terminate the temporary restraining order.[16] During the course of that hearing, the judges made reference to their prior study of the briefs (see, *e.g.*, App. E 567-568, 581-582), and in their oral arguments, *counsel for appellants* emphasized that they "have fully briefed this case," and that the questions "have been thoroughly briefed and are ripe for judicial review" (*id.*, at 531, 558).

Instead of announcing, as contended by these appellants, that oral argument would *not* be heard, Chief Judge Mehaffy observed at the outset that he had had experience in cases of this type and that the court would not permit "fifteen lawyers" to "argue it orally." Instead, he requested that counsel "separate it in groups" and have one lawyer "speak for a group and not have any fifteen arguments or lawyers more or less arguing the same thing." He emphasized that the court would proceed "in an orderly manner and in such a fashion that will give everybody fair treatment" (*id.*, at 458, 460). The court then proceeded to hear oral arguments on the pending motions. However, these arguments became quite extensive, dealing in detail with the merits of the case as well as with issues raised by the motion. For example, counsel for the Commission acknowledged that "Judge Miller is familiar with the facts and background of this case," but for the benefit of the other judges he considered it advisable to "go back a bit and start in the year 1964." He then proceeded to give a detailed history of the proceeding and argued orally the basic contentions embodied in the Government's brief[17]—

16. Plaintiffs' motion was overruled, whereupon defendants' motion was withdrawn (App. E 564, 565).

17. Stating: "I don't know what else can be said about the Commission's order. . . ." (*Id.*, at 507).



an oral argument comprising 36 pages of the reporter's transcript (*id.*, at 480-515).

Next, counsel for Johnson spoke as representative of all intervening defendants, announcing that "I will talk generally about the interests of the intervening defendants in the original action" (*id.*, at 530).[18] After emphasizing the thoroughness of the briefs previously filed, counsel announced to the court that "we are ready to go—on the merits of this case. Let's get to these merits . . . they [appellants] want the decision on the merits now" (*id.*, at 531, 532).

Counsel for appellees then announced that appellees were in agreement with appellants' suggestion that the case be submitted, but asked the court "to allow us seven days to submit our findings of facts and conclusions of law" (*id.*, at 550).

Counsel for Bowman thereupon announced that "[w]e are in absolute accord" with the suggestion that the case "is ripe for judicial proceeding with dispatch and toward an early decision." He urged the court to render "[a]n immediate decision on those issues," and stated that "we join in the proposition that we submit . . . proposed facts and conclusions within the seven day period" (*id.*, at 555-556).

When confronted with the requests by counsel for all parties that the case be forthwith submitted and promptly decided, Judge Williams asked counsel for Bowman:

18. Counsel for Bowman subsequently argued briefly (*id.*, at 558-559, 578-581); counsel for Lorch made comments (*id.*, at 568, 581); counsel for Red Ball was present but said nothing (*id.*, at 453-454).

"Is there any matter that has not been thoroughly briefed so far as you and your client are concerned that you would care to raise in additional oral argument?" (*Id.*, at 558).

Counsel for Bowman responded that the cases "have been thoroughly briefed and are ripe for judicial review." Judge Williams then asked again if anything further could be added in oral argument "other than what you have already said." Counsel replied that he would like to file "some brief answer to the reply brief which we feel raised some new matters," explaining that this could be handled in a brief "filed along with the proposed stipulations or conclusions of law and findings of fact that would encompass a suggested order to this court for its consideration" (*id.*, at 558-559).[19]

Following a recess to consider the proposals submitted by the parties, Judge Miller, speaking for the court, announced that:

". . . unless there is someone that desires to submit further arguments on the merits of the . . . main case, . . . if there is no further arguments to be submitted on that, we are going to submit that case and take it under consideration and proceed to prepare some decision in that case as quickly as we can" (*id.*, at 566).

Judge Miller then asked, *once again*, if any party had "any objections to that" procedure, whereupon appellant counsel requested a recess to confer among themselves, then Commission counsel, speaking for all appellants, stated: "Your suggestion is acceptable to us" (*id.*, at 567-568). The court thereupon granted the parties' joint request for permission to file proposed findings of fact and conclusions

19. Although the court granted permission for the filing of such additional brief, none was filed (*id.*, at 556-557).



of law and then took the case under advisement for decision (*id.*, at 568-570).[20]

It is abundantly clear, therefore, that the court convened, on July 24, 1973, with an announced plan to dispose of the motions then pending and reconvene in two weeks to hear oral arguments on the merits (*id.*, at 457-458). However, after being urged by counsel for all parties to take the case under immediate submission, receive proposed findings and conclusions of law, and render a prompt decision, the court accepted these suggestions and proceeded to render its decision pursuant to the *exact procedure* urged by *all* counsel.

Appellants' contentions concerning inadequate oral argument are clearly improper.

### There Is No Basis for Appellants' Charge That the District Court Failed to Review the Record

Certain appellants have levelled a serious and wholly unwarranted attack upon the judicial integrity of the District Court. In its opinion, signed by all three judges,[21] the court stated that it reached its conclusion ". . . after full consideration of . . . the pertinent portions of the entire record" (App. J 748, 788). These appellants[22] charge that this was a misrepresentation by the court; that there was, in fact, *no* review by the court of "any significant portion

20. Counsel for Lorch accuses the court of referring to briefs as "window dressing." (J.S. 8). This comment (App. E 582), made by one judge to another, had to do with a collateral argument concerning alleged misrepresentations in one of the briefs and counsel's request for an opportunity to respond to such assertions.

21. Chief Judge Pat Mehaffy, Court of Appeals, Eighth Circuit; Senior District Judge John E. Miller; and District Judge Paul X Williams.

22. The Jurisdictional Statement filed on behalf of the United States does not embrace these assertions.

of the record made before the Commission" (J. S. Red Ball 10). Appellants' charge is supported solely by an affidavit, containing hearsay statements, executed by an attorney for certain appellants.[23]

Appellees have refrained from filing a motion to strike counsel's affidavit and the arguments based thereon, since we do not rely solely upon the general proposition that assertions of this type will not be considered on appeal.[24] In order to dispel any possible doubt concerning the propriety of the District Court's motives and conduct, appellees prefer to demonstrate the impropriety of such charges.

In reaching its conclusions, the District Court had before it the complete record made before the Commission. In addition, *each individual Judge* was furnished with the following: (a) A comprehensive abstract of the evidence prepared by Johnson and Bowman (7 volumes; 3,200 pages); (b) another comprehensive abstract of the evidence prepared by Red Ball and certain appellees (7 volumes; 1,647 pages); (c) an extensive summary of the evidence contained in the 300-page report of the examiners; (d) another summary contained in the Commission's 225-page report; and (e) seven comprehensive briefs containing detailed quotations and summaries of the evidence (over

23. The affiant does not appear of counsel on the only Jurisdictional Statements that contain his affidavit (Red Ball, Johnson and Bowman) but does appear of counsel on the other Jurisdictional Statement (Lorch) that asserts contentions based on such affidavit.

24. Charges of this type are improper and may be stricken or wholly disregarded by the court. R. Stern and E. Gressman, Supreme Court Practice 477 (4th Ed. 1969). The practice of inserting in briefs language that tends to impugn the "motives or conduct" of the trial court is strongly disapproved and "statements objectionable in this regard will not be considered." 5 C.J.S. *Appeal and Error*, § 1327 (1958). This court will not ordinarily consider matter dehors the record, whether by affidavit or otherwise. 36 C.J.S. *Federal Courts*, § 201(9)m, at 346; 4A C.J.S. *Appeal and Error* §§ 1206, 1211.



1,200 pages). Each judge therefore had before him summaries, excerpts, charts and briefs totaling approximately 6,600 pages.[25]

In reaching its conclusions, the court stated that it gave "full consideration" or "careful consideration" to the following:

1. "[T]wo sets of detailed abstracts of the evidence . . . [that] are strikingly similar and provide an accurate summary of the evidence" (App. J 746, 775).

2. "[C]omprehensive findings of fact embodied in the appendices to the Examiners' Report and to the Division's Report. No challenge was made by any party to the accuracy of the findings of fact and, collectively, they present a comprehensive summary of the evidence" (*id.*, at 775-776).

3. "[E]xtensive and thorough briefs . . . submitted . . . in support of the respective contentions of the parties in interest . . . ." (*id.*, at 748).

4. "[P]roposed findings of fact and conclusions of law submitted by the parties" (*Ibid.*).

5. "[A] great many of the exhibits" (*Ibid.*).

6. "[P]ertinent portions of the entire record" (*Ibid.*).

All counsel and the court recognized that voluminous portions of the record are inapplicable to the three applications that are the subject of the suit.[26]

25. With the exception of the briefs, this material duplicated documents contained in the record.

26. *E.g.*, counsel for Johnson, in response to questions from the court, placed emphasis on the fact that much evidence of record had no relationship to the Johnson, Bowman and Red Ball case (App. E 536). The court so found (App. J 775). Specifically, 506 of the 933 public witnesses were presented by applicants *other* than the three here involved. Some witnesses supported more than one applicant; *e.g.*, 746 supported the seven applicants *other* than Johnson, Bowman and Red Ball. (Examiners' Report, p. 4; District Court brief of United States, App. II.)

During the oral arguments the court acknowledged the physical difficulties presented in examining such a large record (App. E 510, 514-515, 547). In recognition of these difficulties, counsel furnished to the court copies of those portions of the record pertinent to their contentions. All parties quoted extensively from the record in their briefs, and each included detailed appendices or exhibits containing specific matters relied upon.[27]

Of paramount significance, however, is the fact that counsel for appellants *urged* the court *not* to review the original record of the hearing before the Commission, but, instead, *to rely upon the detailed abstracts prepared by the parties summarizing all oral and documentary evidence presented at the consolidated hearing.*

Counsel for Johnson commended the seven-volume abstract prepared jointly by Johnson and Bowman as follows:

> "This work, containing in excess of 3,200 pages, capsules this huge record into workable proportions. A set of these volumes is a part of the agency record being certified to this Court. Counsel for intervening defendants are making a set available to each of the judges on the three-judge panel designated to hear this action." (Johnson Brief 9).

Counsel for Bowman, speaking of the same abstracts, stated:

> "At the conclusion of the hearing, we carefully studied and digested all of the testimony and exhibits and submitted to the Commission an abstract, not from the standpoint of advocates, but with a sincere effort to present the summary in an impartial factual manner, emulating to the best of our ability the judicial approach. . . . Copies of the seven (7) volume abstract are being made available to the Court . . . . *It is hoped that the Abstract will assist the Court and serve as a basic reference for any factual statements made in Commission orders or briefs.*" (Bowman Brief 3-4) (Emphasis added).

27. *E.g.*, Lorch filed a series of exhibits consisting of 435 pages of summaries and tables.



Initially, appellees' counsel did not furnish the court copies of their 1,647-page abstract (prepared jointly with Red Ball), since it was included as a part of the record that had been filed; however, *at the request of the court*, extra copies were furnished.[28]

The APA requires the court to "review the whole record *or those parts of it cited by a party.*" 5 U.S.C. § 706(2) (Emphasis added). This is precisely what was done by the District Court.

### The District Court Followed Proper Procedures in Preparing Its Opinion

Certain appellants have suggested that the three judges of the lower court did not perform their judicial function. The court is charged with "adopting verbatim" or "mechanically adopting" the findings of fact and conclusions of law proposed by appellees.[29]

As previously noted, the District Court considered briefs and oral arguments on every facet of this case,

28. In addition to the two sets of abstracts included as a part of the Commission record, extra copies, as filed below, are also included in the record before this Court. (See District Court clerk's certification.) Appellant Red Ball, while recognizing that the abstracts "accurately reflect a summary of the testimony of the witnesses," suggests that the exhibits could be examined only from the basic record (J.S. Red Ball 10). However, as stated by other appellant counsel, the abstracts summarized *all* evidence, oral and documentary.

29. The United States has not advanced such an argument.

and stated that it welcomed the submission by all parties of proposed findings and conclusions prior to the rendering of its decision (App. D 571-572).[30]

The District Court did not "mechanically adopt" appellees' proposals. The court wrote its own opinion. After summarizing its study of the record, the briefs, and the findings and conclusions proposed by appellants and appellees, it adopted appellees' proposals after finding that they "are correct".[31] The court added other comments and quotations not included in appellees' proposals.[32] The action of the District Court in preparing its opinion is neither error, nor an abdication of judicial function, and most certainly is not a basis for this Court to note probable jurisdiction. *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651 (1964).

The United States submitted proposed findings and conclusions, containing three blank signature lines for the

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30. The court entered two orders providing for the submission of proposed findings and conclusions. (District Court clerk's certification, doc. nos. 75, 76, Vol. IV.)

31. "Extensive and thorough briefs have been submitted to the court in support of the respective contentions of the parties in interest and proposed findings of fact and conclusions of law have been received, which the court has studied, along with a great many of the exhibits and the Report of the Examiners and the Division 1 Report.

"After full consideration of the contentions of all the parties, the pertinent portions of the entire record, and the proposed findings of fact and conclusions of law submitted by the parties, the court is convinced that the proposed findings and conclusions submitted and requested by plaintiffs are correct, and they are adopted by the court as hereinafter set forth." (App. J 748)

32. *E.g.*, appellees proposed a single sentence recording the court's refusal to review *Jones* (App. I 699); the court wrote over five pages (App. J 789-794). The court's independent research is reflected by its quotation from, and citation to, cases not quoted or cited in appellees' proposal and the changes it made in appellees' proposed conclusion (*id.*, at 774, 776, 788). The procedure followed was that commended in *Schilling* v. *Schwitzer-Cummins Co.*, 142 F.2d 82 (CADC 1944).



judges to sign (App. F 585-609). Red Ball, Johnson and Lorch actually submitted a "Proposed Opinion" together with findings and conclusions with similar signature spaces (App. G 615-645). Bowman was not at all subtle—the document it submitted was entitled "Opinion," with signature spaces (App. H 647-695). The appellees submitted only "Proposed Findings of Fact And Conclusions of Law" (App. I 697-738).

All parties understood that the District Court desired to have the benefit of proposed findings and conclusions prior to its reaching a decision.[33] This procedure is consistent with local practice and the Federal Rules of Civil Procedure.[34]

The District Court followed the guidelines of the Eighth Circuit set forth in *Bradley* v. *Maryland Casualty Company*, 382 F.2d 415, 423 (1967), cited by Bowman (J.S. 7, 8). Judge, now Justice, Blackmun, applied the holding of *El Paso*, *supra*, and determined that the adopted findings were "clearly supported by the evidence and not vulnerable."[35] The District Court's opinion in the case at bar likewise is carefully drawn, includes material not contained in appellees' proposed findings, and cites many of the cases cited by appellants. The complaint of these appellants is with the decision reached by the court, not with the use of appellees' proposed findings and conclusions.

This Court held in *El Paso*, *supra*, that findings and conclusions prepared by counsel and adopted by the court

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33. See note 30, *supra*.

34. Rule 13, Rules of The United States District Courts for the Eastern and Western Districts of Arkansas, permits the court to direct the filing of proposed findings of fact and conclusions of law; Rule 52(a), F.R.C.P.

35. Judge Mehaffy, a member of the three-judge panel, was also a member of the panel which considered *Bradley*, *supra*.

are satisfactory unless unsupported by the evidence, even though the lower court there announced its decision and told prevailing counsel to prepare the findings and a judgment. Mr. Justice Douglas stated:

> "Those findings, though not the product of the workings of the district judge's mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 184-185." 376 U.S. at 656.[36]

In *Crescent, supra*, Mr. Justice Douglas, after noting the defendants' allegation that the court's findings were "mainly taken verbatim from the government's brief," stated:

> "But they are nonetheless the findings of the District Court. And they must stand or fall depending on whether they are supported by the evidence. We think they are." 323 U.S., at 184-185.

While appellants refer to other cases, it should be noted that none of the court of appeal cases cited by appellants reversed because of the trial court's use or "verbatim adoption" of proposed findings prepared by counsel. It should also be noted that each of the later decisions relied upon by appellants actually cite *El Paso* for the principle that the findings, *not who authored them*, are the important consideration.[37] In addition, some of the recent

36. See also concurring opinion of Mr. Justice Harlan: "Nevertheless, if they are supported by evidence, they are not rendered suspect simply because the trial court, as here, has accepted *in toto* the findings proposed by one side or the other." 376 U.S., at 662-663.

37. *Industrial Building Materials, Inc.* v. *Interchemical Corporation*, 437 F.2d 1336, 1339 (CA9 1970); *In re Las Colinas, Inc.*, 426 F.2d 1005, 1009 (CA1 1970); *Bradley* v. *Maryland Casualty Co.*, 382 F.2d at 423; *Featherstone* v. *Barash*, 345 F.2d 246, 251 (CA10 1965).



decisions of the courts of appeals not only cite *El Paso*, but also hold that all findings of fact and conclusions of law are to be considered on an identical standard regardless of whether they were court originated or party suggested.[38] While appellants cite and quote *Roberts* v. *Ross*, 344 F.2d 747 (CA3 1965), they have ignored the finding therein which is pertinent to the present situation, namely: "Most of the reported cases which have approved findings and conclusions which the trial judge has adopted in the form prepared by counsel without change involve findings and conclusions submitted before decision." 344 F.2d, at 747, n. 4.

Appellants' unfortunate interchange of the terms "findings," "judgment" and "opinion" of the District Court is improper. The District Court's opinion and judgment were its own product, and neither was suggested or offered by appellees. A contention similar to the due process argument presented by Red Ball (J.S. 14), concerning the adoption of appellees' proposed findings, was considered and rejected in *Bradley, supra*. Likewise, appellants' reliance on *Ayrshire Collieries Corp.* v. *U. S.*, 331 U.S. 132 (1947), is misplaced, because here the District Court was properly convened and all judges participated in the decisions, opinions and judgments of the court, as required by 28 U.S.C. §§ 2284, 2325.

The suggestion that Judges Mehaffy, Miller and Williams acted improperly or abdicated their judicial function by utilizing appellees' proposed findings is unworthy of consideration by this Court. Appellants should not be heard to question the integrity of the three judges simply

38. *Eli Lilly & Co.* v. *Generix Drug Sales, Inc.*, 460 F.2d 1096, 1099 (CA5 1972); *Railex Corporation* v. *Speed Check Co.*, 457 F.2d 1040, 1042 (CA5 1972); *In re Flora Mir Candy Corporation*, 432 F.2d 1060, 1062 (CA2 1970); *Schnell* v. *Allbright-Nell Co.*, 348 F.2d 444, 446 (CA7 1965).

because their view of the law did not coincide with that of the judges who objectively considered the record, the briefs and the oral arguments.

### The District Court Applied Proper Standards of Judicial Review

Appellants allege that the District Court utilized an improper standard of judicial review—that the APA does not authorize the court to hold unlawful and set aside agency decision *in an adjudicatory proceeding* found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Appellants charge that the District Court decision creates a "new standard" (J.S. Johnson 13), or "novel standard" (J.S. United States 9), or "Novel Concept of De Novo Judicial Review" (J.S. Lorch 16). More specifically, it is asserted that:

> ". . . absent questions of the agency's authority which are not involved here, an agency determination in adjudicatory proceedings which is supported by substantial evidence cannot properly be found to be 'arbitrary or capricious.' " (J.S. United States 10).

It should be emphasized that the District Court's recognition of its limited scope of review is fully consistent with the contentions of all parties; and, further, that the court carefully refrained from usurping the agency's functions. At the same time, the court responded to the requirements of the APA and reviewed the agency proceeding in accordance with the statute and the cases decided thereunder. In performing this function the court was called upon to decide whether the division acted arbitrarily and capriciously in applying different standards to its consideration of the evidence. The court found that a discriminatory double standard was applied in arriving at the determinative findings and conclusions in the division's report. The court's opinion clearly enumerates those errors of law. They include, *inter alia*:



(1) Refusal to give credence to appellees' voluminous traffic (transit-time) studies on the ground that they covered periods of time subsequent to the filing of the applications, while basing critical findings favorable to appellant carriers upon their own studies that covered similar or later periods (App. J 763-764, 772, 779).

(2) Refusal to give credence to appellees' traffic studies on the ground that they covered short periods of time, while basing critical findings favorable to appellant carriers upon their own studies that covered identical or shorter periods (*id.*, at 762-763, 778-779).

(3) Basing critical findings, favorable to appellants, on portions of shipper-sponsored traffic studies, while refusing to make findings, favorable to appellees, based on other portions or summaries of the same exhibits (*id.*, at 781).

(4) Basing critical findings, favorable to appellants, on portions of appellants' own traffic studies, while refusing to make findings, favorable to appellees, based on other portions or summaries of the same exhibits (*id.*, at 780).

(5) Basing critical findings, favorable to appellants, on service restrictions of appellees in official tariffs, while refusing to make findings, favorable to appellees, on identical or similar restrictions of appellants in the same tariffs (*id.*, at 764-765, 781).

(6) Official notice by the division (on its own motion) of facts in an industry publication, favorable to appellants, while refusing (upon request of appel-

lees) to take notice of similar facts, unfavorable to appellants, appearing in the same publication (*id.*, at 765, 781-782).[39]

Clearly, this action by the division ". . . was an exercise of arbitrary power, at variance with 'the rudiments of fair play' . . . long known to our law." *West Ohio Gas Co.* v. *Public Utilities Commission*, 294 U.S. 63 (1935). The exercise of such arbitrary power led the court below to conclude that the division's report "sounds more in advocacy than in impartial adjudication" (*id.*, at 787).

After making the findings discussed above, the court recognized that the law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated (*id.*, at 779). As stated in the concurring opinion in *Mary Carter Paint Co.* v. *FTC*, 333 F.2d 654, 660 (CA5 1964), *rev'd on other grounds*, 382 U.S. 46 (1965), "there may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." As the decision below makes clear, the error of the Commission was that it acted arbitrarily and capriciously in applying different standards and that, therefore, the error was one of *law*, not of fact (*id.*, at 774).

Legal error is further demonstrated by the court's recognition of the division's failure to make any "comparative analysis of the quantity of service available between any of the involved points" (*id.*, at 782). While professing to "take official notice" of recent increases in available service (App. C 106), as it was required to do, the division made no analysis, evaluation or acknowledgment of the

39. The division made critical findings of facts from the record, favorable to appellants, that were *directly contrary* to the more current facts that appeared in the officially-noted publication (App. B 148; App. J 765, 781-782).



tremendous changes that occurred while the proceeding was pending (see notes 3 and 9, *supra*). The division was apparently unaware of the impact of its order (*id.*, at 782-784).

Viewing the record in its entirety, consistent with *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951), the court further determined that the decision of the Commission was not based upon the entire record, did not meet the requisite of clarity, included ultimate conclusions based on subordinate findings unsupported by consideration of the entire record, and was, therefore, arbitrary and capricious (*id.*, at 776-778).

While the court made other and similar findings and conclusions, the foregoing demonstrates that the court did not weigh the evidence. It dealt in terms of errors of law. Indeed, it was the court's responsibility to do so under 5 U.S.C. § 706.

The District Court recognized its limited scope of review but concomitantly recognized that it must find whether there was a rational basis for the conclusions reached by the agency; otherwise, the reviewing court would have little, if any, function.[40]

Certain appellants argue that, in applying 5 U.S.C. § 706, "the District Court misread the decision in *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402." (J.S. Lorch 17). The United States goes further. It asks this Court to modify its holding in *Overton* and establish a limitation on the scope of judicial review that is directly contrary to the APA, to this Court's rulings in other cases,

40. ". . . [T]he court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." In so doing it must engage in "a thorough, probing, in-depth review." *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 415, 416 (1971).

and to decisional law consistently followed by other federal courts over a long period of years.

The United States does not contend that the District Court did not have adequate grounds for finding the division's actions to be arbitrary and capricious. Instead, it takes the position that the court lacked authority to even consider such a question in reviewing this adjudicatory proceeding. It contends that in such cases the court cannot find agency action to be "arbitrary or capricious" if such action is "supported by substantial evidence." (J.S. United States 10).

This contention does violence to the statute and established decisional law. As stated by this Court in *Overton*, 401 U.S., at 413-414, in determining the standard for review, "we must look to § 706 of the Administrative Procedure Act, 5 U.S.C. § 706 . . . which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet *six separate standards.*"[41] (Emphasis added). Under the first of these

41. 5 U.S.C. § 706 provides:

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

*(Continued on following page)*



"six separate standards," the decision must be set aside if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Under the fifth standard, it must be set aside if "unsupported by substantial evidence"; but, "the substantial-evidence test is authorized only when the agency action is taken pursuant to a rule-making provision of the Administrative Procedure Act . . . or when the agency action is based on a public adjudicatory hearing." 401 U.S., at 414.[42] Since the action in the case at bar was based upon an adjudicatory hearing, appellants argue that, under *Overton*, the substantial-evidence test is the *only* test to be applied. This is directly contrary to this Court's clear statement in *Overton* that:

> ". . . In *all* cases agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements." (*Ibid.*) (emphasis added).

Apparently recognizing that their argument does violence to the statute, counsel contend that, in reviewing agency action based on adjudicatory hearings, a court should apply *only* the substantial-evidence test "absent questions of the agency's authority." (J.S. United States

Footnote continued—

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

42. *Accord, Camp* v. *Pitts*, 411 U.S. 142 (1973).

10). No explanation is given why counsel concedes that standard No. 3, involving agency authority, is applicable to *all* cases, while denying applicability of the other standards. Standards No. 2 and 4 are in no different position than standard No. 3. Under the second, agency action must be set aside if it was contrary to constitutional right, power, privilege, or immunity, and, under the fourth, if lawful procedure was not observed. They argue that if substantial evidence can be found, the agency's order must be upheld even though it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *A fortiori*, it follows that if the substantial-evidence test can be met, it matters not that the agency violated constitutional rights or procedural requirements. This, of course, not only flies in the face of the statute[43] and plain logic, but is manifestly contrary to the holding in *Overton* that in "all cases" agency action must be set aside if it was arbitrary or capricious, or failed to meet statutory or procedural requisites, or was contrary to constitutional requirements.

Appellants' contentions are also contrary to this Court's recent rulings in *Atchison, T. & S. F. R. Co.* v. *Wichita Bd. of Trade*, 412 U.S. 800 (1973). In that case, a district court set aside an order of the Commission *even though it expressly found that the Commission's conclusions were supported by substantial evidence* (352 F. Supp. 365, 367), and, on appeal, that finding was not challenged.

43. Among other things, a reading of § 706 refutes the argument. The statute is plain on its face, and § 706(2) clearly sets out six tests in separate subsections. The disjunctive term "or" is employed in a statute to show that the failure to comply with *any* requirement therein imposes liabilty. 1A Sutherland Statutory Construction § 21.14 (C. Sands 4th ed. 1972). Furthermore when, in a statutory enumeration of things, the disjunctive term "or" is placed immediately before the last number of the series (as between § 706(2)(E) and (F)), the term "or" is understood to exist between the previous members. 50 Am. Jur. *Statutes* § 281, at 267.



After noting this finding, however, this Court agreed with the district court that the Commission's order was invalid for other reasons.[44] The Commission's order was not set aside because of lack of "the agency's authority" or because it was not "supported by substantial evidence." If the contentions now asserted by appellants in the case at bar had been adopted in *Atchison*, this Court's review of the agency's order there would have ended with its recognition that the order was supported by substantial evidence.[45]

Appellants challenge the District Court's adherence to a principle of judicial review that has been consistently followed by other district courts reviewing Commission proceedings. For example, in *Clearfield Cheese Co.* v. *United States*, 308 F. Supp. 1072 (W.D. Mo. 1969), the court clearly recognized the separate nature of the six statutory tests.[46] That case was recently cited as authority for this proposition in *Florida Terminal & Trucking Co.* v. *United States*, 363 F. Supp. 1355, 1359 (M.D. Fla. 1973).

In the case at bar, the District Court relied upon other decisions in which Commission orders in adjudicatory proceedings were set aside, *not for lack of substantial*

44. Separate opinions were issued. The opinion by Mr. Justice Douglas describes several errors of law in the Commission's decision.

45. It should be noted that the argument advanced on behalf of the Commission in the case at bar was *not* advanced on behalf of that agency as an appellant in *Atchison*.

46. "Section 706, Title 5, USC . . . states that review shall be on the 'whole record' and that the reviewing court shall 'hold unlawful and set aside agency action, findings and conclusions found to be' arbitrary, capricious, abuse of discretion, or otherwise unlawful *or* contrary to a constitutional right, power, privilege or immunity, *or* in excess of agency jurisdiction, *or* unsupported by substantial evidence, *or* arrived at without observance of lawful procedures *or* 'unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.'" 308 F. Supp., at 1074 (emphasis added).

*evidence*, but because they were based upon findings that were arbitrary or capricious. These include *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529 (W.D. Mo. 1966), in which the court recognized that the terms "arbitrary" and "capricious" mean "without rational basis." In the case at bar, the District Court made identical findings and conclusions, setting aside the Commission's order for the identical reasons enunciated in *Campbell*[47] (App. J 777, 785).

The District Court also relied upon: *Columbia Shippers and Receivers Ass'n, Inc.* v. *United States*, 301 F. Supp. 310, 319 (Del. 1969), wherein the court stated that "*in addition* to the 'substantial evidence' test generally applicable to this action," § 706(2)(A) of the APA requires that the reviewing court hold unlawful and set aside agency action, findings and conclusions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (emphasis added); *Eastern Central Motor Carriers Ass'n* v. *United States*, 239 F. Supp. 591, 594 (D.C. 1965), in which the court recognized that agency action must be set aside if it is "either" arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, *or* in excess of statutory jurisdiction, *or* unsupported by substantial evidence; *Mitchell Bros. Truck Lines* v. *United States*, 225 F. Supp. 755, 758 (Ore. 1963), *aff'd* 378 U.S. 125 (1964); *Heavy-Specialized Carriers Conference* v. *United States*, 231 F. Supp. 968, 970 (E.D. Mo. 1964); *Nashua Motor Express, Inc.* v. *United States*, 230 F. Supp. 646 (N.H. 1964); *Youngblood Truck Lines, Inc.* v. *United States*, 221 F. Supp. 809, 812 (N.D. N.C. 1963); *Omaha Grain Exchange* v. *United States*, 194 F. Supp.

47. Although, in *Campbell*, the Commission's order granting a certificate was set aside, with no remand, for the identical reasons assigned in the case at bar, the United States and Commission did not appeal.



929, 934 (Neb. 1961); and *Stott* v. *United States*, 166 F. Supp. 851, 855 (S.D. N.Y. 1958).

**The District Court Properly Declined to Remand**

The Interstate Commerce Act provides for an action to "enjoin" an order of the Interstate Commerce Commission.[48] Jurisdiction is vested in district courts by 28 U.S.C. § 1336(a) to, *inter alia*, "enjoin . . . any order of the Interstate Commerce Commission." Title 28 U.S.C. § 2325 authorizes a three-judge court to enter a "permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission. . . ."

While remand to the agency may be proper, it is *not mandatory*. *E.g.*, *Interstate Commerce Commission* v. *Atlantic Coast Line R. Co.*, 383 U.S. 576 (1966); *American Trucking Ass'ns, Inc.* v. *United States*, 364 U.S. 1 (1960). In *Zuber* v. *Allen*, 396 U.S. 168, 196 (1969), a permanent injunction against the agency order was affirmed, the court noting that "counsel for the . . . [agency] has advanced no new theory for sustaining the order."

In *Atlantic Coast Line*, 383 U.S., at 601, the Court stated that a court can finally dispose of the matter "without any necessity for a remand to the Commission." A remand was ordered because of "the particular circumstances of [the] case" in *American Trucking Ass'ns*, 364 U.S., at 17; however, this Court made it quite clear that no remand would have been ordered except for those "particular circumstances."

This Court has affirmed district court decisions in which no remand to the Commission was ordered. *E.g.*, *Shannon* v. *United States*, 219 F. Supp. 781 (W.D. Tex.

48. 49 U.S.C. §§ 17(9), 305(g) and (h).

1963), *aff'd*, 377 U.S. 311 (1964),[49] and *Pacific Coast Wholesalers Ass'n* v. *United States*, 81 F. Supp. 991 (S.D. Cal. 1949), *aff'd* 338 U.S. 689 (1950).[50]

Examples of cases where three-judge district courts "permanently enjoined" or "vacated, annulled and set aside" orders of the Commission and in which the United States and the Commission did not appeal are *Garrett Freightlines, Inc.* v. *United States*, 324 F. Supp. 575 (Idaho 1971); *Ashworth Transfer, Inc.* v. *United States*, 315 F. Supp. 199 (Utah 1970); *Pennsylvania R.R.* v. *United States*, 202 F. Supp. 584 (E.D. Pa. 1962), and *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529 (W.D. Mo. 1966).

It is clear, therefore, that under the statutes and the decisions, remand to the Commission is not mandatory.[51] Yet, the only issue presented below was "that the proceeding *must* (*not should*) be sent back to the Commission" (App. N 815).[52] The second question, whether the proceeding *should* have been remanded, was not raised below and therefore should not be considered by this Court. This Court has long held that questions presented on appeal must have been fully presented below, *e.g.*, *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365, 371-372, n. 4 (1967);

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49. The three-judge court had found in setting aside an order of the Commission ". . . defendants should be permanently enjoined from enforcing the terms of said order. . ."

50. The form of the judgment provided "the same are hereby set aside and annulled and the enforcement thereof is hereby permanently enjoined." See App. N 818-819.

51. None of the cases cited by appellants holds to the contrary.

52. The sugggestion that remand be ordered was raised only in the post-judgment motion of the United States. The other appellants neither joined in nor supported such suggestion; however, Bowman and Johnson now assert this contention for the first time on appeal. (J.S. Bowman 25; J.S. Johnson 15).



*Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317, 330 (1967); *California* v. *Taylor*, 353 U.S. 553, 556-557, n. 2 (1957).

It should further be noted that the motion to amend the judgment revealed a misunderstanding of the scope of such judgment. It was argued that the court should not "bar the Commission from further consideration of the involved proceeding to determine where lies the public convenience and necessity" (App. K 798). In its opinion overruling the motion, the Court carefully explained that by no means had it barred the Commission from determining where lies the public convenience and necessity. The full scope and impact of the Court's judgment is succinctly explained in the Court's opinion on the motion:

> "The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid. The motion does not contest the court's ruling that such orders are invalid, and, since such orders are invalid, their enforcement should be enjoined.
>
> "The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's pre-

rogative to exercise its administrative functions" (App. N 822).

A very analogous situation is presented in *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543 (CADC 1969), involving multiple applications for a television license. Having found the order erroneous, and rather than again remand, the court held that an entirely new proceeding should be instituted by the Commission. Judge, now Chief Justice, Burger, stated:

> "The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that *it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair.*" 425 F.2d, at 550 (emphasis added).

Here, as in the above FCC case, there exist substantial and compelling reasons for not remanding this proceeding to the Commission. Here, as in that case, the "administrative conduct reflected in [the] record is beyond repair," and both courts found it would "serve no useful purpose" to remand (App. J 788).

In the above case the court noted the agency's "hostility" to certain parties. In the case at bar the court noted the Commission's "predilection to grant these particular applications" and an attitude that "sounds more in advocacy than in impartial adjudication" (App. J 787). Here,



the court also found that "a remand would only create further confusion and result in injustice" (App. N 817). This finding is compelled by many facts and circumstances, including the improperly injected political issues (App. J 769, 786); the voluminous evidence that is wholly unrelated to a determination of the issues presented by these applications;[53] and the court's recognition that the facts of record "have little bearing on a determination at this time of the present or future public convenience and necessity," (*id.*, at 787), there having been "a drastic change in circumstances since the record was closed in 1967" (App. N 815).[54]

The court repeatedly made it clear that the Commission is free to proceed further with a determination of the issues, but, under these peculiar circumstances, recognized that "a remand of this record would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity" (*id.*, at 814).

Appellees submit that remand to the Commission is not mandatory and, furthermore, that under the particular circumstances of this case the District Court properly declined to remand the case for further proceedings on the present record.

---

53. See note 26, *supra*.

54. For example, evidence relating to service provided by three Atlanta-Dallas carriers in 1966-1967 would obviously shed no helpful light on a determination of the adequacy of service provided by 13 or more carriers now in operation. See note 3, *supra*.

## CONCLUSION

There is no substantial question presented by these appeals. The assertions by the United States and the Commission that questions of "public importance" or of "major importance" are involved do not comport with the ruling by the eleven-member Commission that "no issue of general transportation importance is involved" (J.S. Red Ball B2). Case No. 73-1069 (Johnson) should be dismissed. The judgment of the District Court should be affirmed.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069,
73-1070, 73-1071, and 73-1072

BOWMAN TRANSPORTATION, INC., *et al.*,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION

## BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

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**Nos. 73-1055, 73-1069, 73-1070, 73-1071, and 73-1072**

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BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., LORCH-WESTWAY CORPORATION, ET AL., AND UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION

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## BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, ET AL.

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## OPINIONS BELOW

The opinions of the Three-Judge District Court (App. 1275 *et seq.*; 807 *et seq.*)[1] are reported at 364 F.

[1] "App." refers to the Appendix, Volumes I and II, filed by these Appellants.

Supp. 1239. The report of the Interstate Commerce Commission (App. 101 *et seq.*) is published at 114 M.C.C. 571. The final orders of the Commission (App. 363 *et seq.* and 1271) are not reported.

## JURISDICTION

The judgment and opinion of the Three-Judge District Court were entered on September 11, 1973. Appellants United States and Interstate Commerce Commission filed a motion for amendment of judgment on September 17, 1973 (App. 795). On October 4, 1973, the District Court denied the motion. 364 F.Supp. 1266 (App. 807 *et seq.*). Timely notices of appeal were filed (App. 801, 803, 825, 827, 831). By order entered November 13, 1973 (App. 845), the time for docketing this appeal was extended to and including January 8, 1974.

On April 29, 1974, this Court noted probable jurisdiction and consolidated the five appeals. The jurisdiction of the Court to review the District Court's decision on direct appeal rests on 28 U.S.C. §§1253 and 2101(b) (1970).

## QUESTION PRESENTED

Whether, in reversing the decision of the Interstate Commerce Commission based on a formal adjudicatory hearing, the Three-Judge District Court exceeded its jurisdiction and improperly adopted a novel and unwarranted concept of *de novo* review of administrative action by (1) substituting its judgment for that of the agency charged by law with administering the Interstate Commerce Act and the National Transportation Policy, (2) failing to apply the substantial evidence rule to the findings of the agency and its grants of authority to the three motor carrier Appellants and substituting therefor the clearly erroneous test, under the guise of holding the Commission's findings and conclusions arbitrary and capricious and an abuse of discretion, (3) changing the statutory relationship between hearing examiners and their agency with respect to initial and final decisions, and (4) holding the record "stale" and thus insufficient to warrant any Commission action upon that record upon remand.[2]



[2] This represents a consolidation of the following questions stated by the Court in noting probable jurisdiction. These questions are individually answered in the Summary of Argument.

*No. 73-1055:*

2. Can a Three-Judge District Court lawfully set aside and enjoin an order of the Interstate Commerce Commission granting an extension of a motor carrier certificate on the ground the Court does not agree with the order or may consider the evidence would warrant a different conclusion?

4. Whether Commission order issued following extensive hearings, involving a voluminous record, admittedly concluded within all time limitations and Commission rules can be judicially determined to be so stale "as a matter of law" to prohibit any required findings or further consideration. If so, when does such an administrative action reach that point?

*No. 73-1069:*

2. Whether in reversing the Commission's decision awarding certificates of public convenience and necessity the District Court employed erroneous standards of judicial review and improperly substituted its judgment for that of the agency.

*No. 73-1070:*

Whether the Three-Judge Court, in setting aside the administrative agency decision, abdicated or abandoned its judicial function by

(3) failing to give independent judicial consideration and review to the separate grants of authority to the intervening defendant motor carriers;

## STATUTES INVOLVED

The following pertinent statutory provisions are set forth in App. 93-99:

1. The National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding § 1, Historical Note (1970).

2. Sections 17(4) and (5) of the Interstate Commerce Act, as amended, 49 U.S.C. § § 17(4) and (5) (1970).

3. Section 207 of the Interstate Commerce Act, as amended, 49 U.S.C. § 307 (1970).

4. Section 7 of the Administrative Procedure Act, 5 U.S.C. § 556 (1970).

5. Section 8 of the Administrative Procedure Act, 5 U.S.C. § 557 (1970).

6. Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706 (1970).

## STATEMENT

This case involves the validity of the standards of review applied by a Three-Judge District Court to a decision of the Interstate Commerce Commission. If sustained by this Court, these standards inevitably will expand the scope of review to be applied by Courts of Appeals and Three-Judge District Courts to formal

(5) rejecting Supreme Court precedent limiting the Court's scope of review and thereby substituting its judgment for that of the agency charged with the responsibility therefor;

*No. 73-1071:*

Whether the Three-Judge District Court improperly adopted a novel and unwarranted concept of *de novo* review of Commission decisions and changed the statutory relationship between hearing examiners and their agency with respect to recommended and final decisions.



adjudication by the departments and agencies of the Federal Government.

This appeal seeks reversal of two orders under which the District Court set aside the Commission's grant of three certificates of public convenience and necessity. The District Court invalidated the Commission's findings (1) that the public convenience and necessity required the grant of motor common carrier authority to three applicants (Appellants Bowman Transportation, Inc., Johnson Motor Lines, Inc., and Red Ball Motor Freight, Inc.) to transport general commodities by motor vehicle over regular routes between specified points, generally in the Southeastern and Southwestern areas of the United States, and (2) that existing transportation service between the points involved was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public (including Appellants Lorch-Westway Corporation, et al.).[3]

In an administrative proceeding of nearly 24,000 pages of testimony and approximately 2,000 exhibits, Appellees as Protestants unsucessfully had opposed the Commission grant of certificates to one or more of the three motor common carrier Appellants. The District Court mechanically adopted verbatim the proposed findings and conclusions of Appellees, who were Plaintiffs in the action before that Court, and also denied a Commission motion to remand the case to the agency.

### The Agency Proceeding

After over seven years of administrative proceedings, the Commission, on September 6, 1972, made final its

[3]These are 41 of the shippers and receivers of freight which supported the application of Johnson Motor Lines, Inc., before the Commission and which were Intervening Defendants before the District Court (App. 827).

December 30, 1971, award of certificates of public convenience and necessity to Appellants Bowman Transportation, Inc. (Bowman), Johnson Motor Lines, Inc. (Johnson), and Red Ball Motor Freight, Inc. (Red Ball) (App. 1271). The award to Johnson authorized the single line carriage of general commodities between points in its existing 16-state system in the New England, Middle Atlantic, Southeast, and Gulf regions, on the one hand, and, on the other, specified points on proposed routes from New Orleans, La., to Houston, Tex., and from Atlanta, Ga., to Dallas/Fort Worth, Tex. The Red Ball award tied its existing network of routes in 10 Southwestern states to proposed service at such Southeastern cities as Atlanta, Ga., Birmingham, Ala., and Jackson, Miss. The Bowman grant unified its present system in the Eastern regions of the country with proposed service at 7 points in Arkansas, 2 in Kansas, 9 in Louisiana, 10 in Mississippi, 3 in Missouri, and 15 in Texas. 114 M.C.C. 580-582, 584-589, 612-614 (App. 110-112, 114-119, 158-160).

Between December 1964 and July 1965, the Commission received twenty applications from motor common carriers. These sought authority to conduct general commodity operations between points in the Southwest and Southeast, in order to meet the burgeoning transportation needs in and between the two regions. Subsequent to a prehearing conference held in 1966, the Commission ordered that ten of the applications be heard on a consolidated record by two hearing examiners.

Hearings commenced on March 21, 1966, and continued at 8 cities throughout the involved area for 147 days through August 24, 1967. 1,009 witnesses presented oral testimony, including 933 shippers and receivers of freight who supported the applications. 1,989 exhibits were received, including voluminous,



detailed studies depicting traffic flows between the Eastern, Central, Southeastern and Southwestern parts of the United States. Competing rail and motor carriers opposed these applications. The hearing admittedly involved "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application proceedings before this Commission." 114 M.C.C. 573 (App. 103).

On November 19, 1969, the two hearing examiners issued a recommended report and order (App. 863 *et seq.*). That decision found that all of the applicants were "capable of performing the operations proposed" (App. 866), but concluded that "the applicants have failed to establish that the present or future public convenience and necessity require the operations proposed" (App. 905).

Although all parties recognized that general commodities were involved, the examiners erroneously considered all applications collectively (*e.g.*, App. 891) and classified the freight into 45 categories (App. 869). In reaching their recommendation, the examiners de-emphasized the numerous complaints voiced by the supporting shippers (App. 874) concerning inconsistent and lengthy transit times, inadequate pick-up service, difficulties in tracing, and the handling of loss and damage claims (App. 875-889).

Multiple and voluminous exceptions and replies were filed respecting the initial decision. These included the exceptions of Lorch-Westway Corporation and 40 other shippers, who were permitted to intervene by the Commission. On December 30, 1971, the Commission, Division 1,[4] entered its report and order granting three, and denying the remainder, of the applications. 114

[4] Commission action by a Division thereof is authorized by 49 U.S.C. §17(4)(1970).

M.C.C. 571 *et seq.* (App. 101 *et seq.*).[5]

After a thorough reconsideration and re-evaluation of the evidence, the recommendations of the hearing examiners, and the exceptions and replies thereto, the Commission rejected the examiners' findings and adopted only their "summary of the evidence presented by the protestants [Appellees] as to their authorities, equipment and operations." 114 M.C.C. 575 (App. 105). In reaching its decision, the Commission concluded that the examiners' analysis of the evidence on a commodity basis had resulted in an atomized treatment which did not accurately reflect the needs of the territories and points involved. 114 M.C.C. 591 (App. 121). Accordingly, it completely regrouped the "supporting evidence on a geographic basis" in order to obtain "a clearer picture of the supporting witnesses' needs" (*Id.*). The Commission found that "[t]he evidence considered in its entirety is convincing that the additional services . . . will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public." 114 M.C.C. 599 (App. 129).

The Commission's approval of the three applications turned fundamentally upon several correlative findings. First, the agency found that the record as a whole showed widespread public dissatisfaction with existing service (principally joint line in nature) from, to, and between the Southwest and the Southeast, Eastern

[5] Subsequently, the Commission, upon reconsideration of one of the denials, granted a fourth application, in part. *Jones Truck Lines, Inc., Extension-Atlanta, Ga.*, 117 M.C.C. 586 (1972), currently pending on judicial review in *Campbell Sixty-Six Express, Inc., et al. v. United States*, Civil Action No. 73-Civ-411-S (W.D. Mo.).



seaboard, and Gulf states, as well as a rapidly increasing public demand for additional motor common carriage of a direct, single line nature. 114 M.C.C. 601-602 (App. 131-132). It also found that the available transportation service between the points, and to the extent authority theretofore had been granted, was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public. 114 M.C.C. 599-600 (App. 129-130). Finally, the Commission found that the gains to be derived by the public from the three new services outweighed any adverse effect the protestants might experience. 114 M.C.C. 611 (App. 157).

On or about December 30, 1971, petitions for reconsideration of the Commission's decision were filed. On September 6, 1972, the Commission, Division 1, acting as an appellate division, denied reconsideration of the Johnson, Red Ball, and Bowman grants (App. 363). On or about September 21, 1972, petitions were filed under the Commission's General Rule of Practice 101(a)(4), 49 C.F.R. §1100.101(a)(4) (Supp. 1973), requesting the entire Commission to rule and announce that the proceeding involved an issue of general transportation importance. On October 6, 1972, the entire Commission denied those petitions (App. 1271).

## The District Court Proceeding

On October 4, 1972, suit was brought in the District Court to set aside the Commission's decision (App. 848). On October 11, 1972, the Three-Judge District Court was designated to hear the action (*Id.*). A hearing was held before the Senior District Judge on November 1, 1972 (App. 371 *et seq.*), who on November 7, 1972, entered a temporary restraining order against the Commission's decision. *Arkansas-Best Freight System,*

*Inc. v. United States*, 350 F. Supp. 539 (W.D. Ark. 1972).

After the filing of extensive briefs, a hearing was held before the entire Court on July 24, 1973 (App. 453 *et seq.*). Proposed findings of fact and conclusions of law were submitted by the parties on August 16, 1973 (App. 585-738). Twenty-six days later the Court filed its decision, 364 F. Supp. 1239 (App. 1275 *et seq.*), copying in almost its entirety Appellees' submission (App. 697 *et seq.*).[6] The Court's decision contained no specific references to the hearing record but solely to portions of Appellees' proposed findings.[7]

The Court, in effect, adopted the findings and conclusions of the hearing examiners denying the ten applications, and rejected the Commission's findings and conclusions supporting the grant of three of these applications. Further, the Court refused to remand the case to the Commission because the administrative record was allegedly "stale" and "because [since] the findings and conclusions of the Division are arbitrary, capricious and without rational basis, no useful purpose would be served" thereby. 364 F. Supp. at 1264 (App. 1319).

The Court decided that, even where an agency's findings of fact are supported by substantial evidence on the record, those findings may be "arbitrary, capricious, [or] an abuse of discretion" under Section

[6] There were three insubstantial changes in wording in §'s 4, 8, and 29 of the conclusions of law in the District Court opinion, 364 F.Supp. at 1257, 1258-1259, 1264 (App. 1305-1306, 1308-1309, 1319), which are matched with the same paragraphs as numbered by Appellees in their proposed findings and conclusions (App. 725-726, 727, 737). The Court's opinion, with paragraphs numbered as in Appellees' proposed findings and conclusions, appears at App. 739 *et seq.*

[7] *E.g.*, 364 F.Supp. at 1254, 1255 (App. 1299, 1301).



10(e)(B)(1) of the Administrative Procedure Act, 5 U.S.C. §706(2)(A)(1970). 364 F. Supp. at 1256-1257 (App. 1305). After paying lip service to the "well-settled principle" of "[t]he limited scope of judicial review of the decisions of independent agencies" and to sustaining administrative action "even though it [the Court] might disagree with the agency's conclusions or consider them contrary to the weight of the evidence", the Court proceeded to ignore those principles. 364 F. Supp. at 1256 (App. 1304).

According to the Court, an allegation of arbitrary and capricious action with respect to findings of fact permitted the Court to circumvent the substantial evidence rule and to base its opinion on a weighing of the evidence. Thus, the Court stated:

> "***Since these requirements [of Section 10(e)(B)(1)] are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding . . . where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion." 364 F. Supp. at 1258 (App. 1307).

Thereafter, the United States and the Commission moved the District Court to amend the judgment of September 11, 1973, by remanding the proceeding to the Commission for further action consistent with the Court's opinion (App. 795). In a second opinion entered on October 4, 1973, the District Court denied the motion. 364 F. Supp. at 1266 *et seq.* (App. 807 *et seq.*).

## SUMMARY OF ARGUMENT

1. The District Court substituted its judgment with respect to the National Transportation Policy and the

public need for transportation in the Southwest and Southeast areas of the United States for the expert exercise of discretion granted by Congress to the Commission. The Court disagreed with the weight given by the Commission to the evidence and held that the evidence warranted a conclusion different from that reached by the agency. The Court thus refused to follow this Court's precedent that it is for the Commission to appraise the facts, to draw inferences therefrom, to exercise its expert judgment with respect thereto, to interpret the National Transportation Policy, and to decide where lies the public interest, even where the Court may disagree with the agency's ultimate disposition of the proceeding. (No. 73-1055, Question No. 2) (pp. 16-19, *infra*).

2. In its decision the District Court erroneously interpreted and misapplied the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. § 706 (1970), and thereby exceeded its jurisdiction. The substantial evidence rule was held inapplicable where it is merely alleged that the agency findings of fact are arbitrary, capricious, or an abuse of discretion. The Court therefore reviewed the record as if it had been made by a trial judge without a jury and, in effect, employed the clearly erroneous rule, inapplicable to administrative proceedings. The Court thereby reviewed *de novo* the record and substituted its judgment, as proposed verbatim by Appellees, for that of the agency. If allowed to stand, this decision will enlarge substantially the scope of judicial review prescribed by the Administrative Procedure Act and this Court's precedent thereunder, with consequent change in the relationship between the judiciary and the administrative agencies. As a result, an increased burden will be imposed upon the Courts in their review of agency action. (No. 73-1069, Question No. 2; No. 73-1070, Question No. (5)) (pp. 14-44, 47-49, *infra*).



3. The District Court accorded overwhelming weight to the hearing examiners' report, to override the Commission's decision. Such a result contradicts 5 U.S.C. §557(b) (1970) which provides that, in its final decision, the "agency has all the powers which it would have in making the initial decision." While a reviewing Court must look to an examiner's report as part of the whole record, such a report remains only a part of the whole record. It cannot be used, as here, as a controlling method of negating the Commission's decision. That exceptions were taken to the examiners' conclusions and that the Commission reached different conclusions were disregarded by the Court. Under this novel theory of law, the role of hearing examiners has been exalted to that of final decision, even where, as here, the agency with statutory responsibility in the motor carrier field reaches contrary conclusions. The result of the Court's action is to defeat the letter and the spirit of the Administrative Procedure Act and to nullify the Interstate Commerce Act. (No. 73-1071) (pp. 44-47, *infra*).

4. The District Court failed to defer to the Commission's expert judgment on the issue of the separate grants of authority to Bowman, Johnson, and Red Ball. The Commission properly rejected the examiners' consideration of all ten applications collectively, without the examiners' evaluation of the merits of the separate applications in light of the public need for increased service. The Court rejected the Commission's expert approach, based on established precedent, and reverted to the position of the examiners. (No. 73-1070, Question No. (3)) (pp. 47-52, *infra*).

5. The District Court held that the record in this case was "stale" because the "extensive record dealing with five or six year old facts" could not support the grant of a certificate in 1973 or 1974. No authority

was cited for this proposition. None exists so far as the facts of this case are concerned. By its very nature, an administrative proceeding creates a gap between the time the record is made and closed and final agency action taken. A further gap occurs when the agency action is judicially reviewed. What the Court, in effect, said was that, in Appellees' vigorous pursuit of their administrative and judicial remedies, the passage of time can so age the record that the Appellees' goal of reversing the agency is reached not because their arguments are meritorious but because the record has become "stale". This Court clearly has rejected such a result. Where the Commission decision is issued following extensive hearings, involving a voluminous record, concluded within all time limitations and Commission rules, a Court cannot judicially determine such proceedings to be "stale" as a matter of law. (No. 73-1055, Question No. 4) (pp. 54-58, *infra*).

6. This Court should find, on the record before it and in the Commission's own decision, that substantial evidence supports the agency findings and that the agency conclusions are warranted. Because of the serious misapprehension or gross misapplication of accepted principles of judicial review by the District Court, remand of this case to the lower Court for further review would serve no useful purpose. It would prolong seriously the inadequacy of service found to exist by the Commission. This Court should remand the case to the District Court with directions to affirm the Commission's decision. (pp. 38-60, *infra*).

## ARGUMENT

Beyond question the Commission's decision is warranted by the substantial evidence recited in the



decision itself.[8] Indeed, Appellees never seriously have claimed that the Commission's findings were unsupported by substantial evidence. The law is clear, under this Court's precedent, that, where such substantial evidence supports the agency decision, the judicial review function of the Court is ended. Indeed, the District Court's opinion recited material evidence which supported the Commission's conclusion that the public convenience and necessity would be served by the grant of authority to the three Appellant motor carriers. However, the Court refused to evaluate, under the substantial evidence rule, the Commission's findings and conclusions supporting that grant.

The District Court flagrantly disregarded precedent as to when the judicial review function ends. It adopted a novel and unwarranted scope of *de novo* review. In effect, the District Court reviewed the Commission's decision under the clearly erroneous rule which has no application whatsoever to this proceeding. On the mere allegation of Appellees that the Commission's action was arbitrary and capricious and constituted an abuse of discretion, the Court below by-passed the applicable substantial evidence rule of the Administrative Procedure Act and erroneously expanded this Court's decision in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, to apply to formal agency adjudication. If the District Court's revision of heretofore established standards of review is allowed to stand, the relationship between the Courts and administrative agencies and departments of the Federal Government will be drastically altered, and the Courts will become but an extension of administrative adjudication.

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[8] See pp. 38-44, 50-53, *infra*.

## I.

## THE THREE-JUDGE DISTRICT COURT ERRONEOUSLY ADOPTED A NOVEL AND UNWARRANTED CONCEPT OF DE NOVO JUDICIAL REVIEW IN FLAGRANT DISREGARD OF THE DECISIONS OF THIS COURT.

Section 10(e)(B)(6) of the Administrative Procedure Act (hereafter APA), 5 U.S.C. § 706(2)(F)(1970), requires a reviewing Court to

> "(2) hold unlawful and set aside agency action, findings, and conclusions found to be–
>
> ***
>
> "(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court."

The latter standard may only be used where "there is no statutory administrative hearing." *Administrative Procedure Act – Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 39-40 (1946) (hereafter S. Doc. No. 248). See, to same effect, *id.* at 214, 217, 278-280, 326, 370, 378; *Attorney General's Manual on the Administrative Procedure Act* 109-110 (1947) (hereafter Attorney General's Manual). As the Court stated in *Texas Mexican Ry. v. United States*, 250 F. Supp. 946 (S.D. Tex. 1966):[9]

> "The conclusion of the Commission finds support in the record as a whole, even though we might justifiably have made a different choice had the

[9] A Three-Judge District Court sitting in the Western District of Arkansas heretofore has reached a similar conclusion. *Patterson v. United States*, 178 F. Supp. 771, 773-774 (W.D. Ark. 1959).



> matter been before us de novo; and, therefore, this Court may not set the order aside." 250 F. Supp. at 950.

Only where a statute provides that the Court "shall review *de novo* the issues presented" does the Court "make an independent determination of the issues." *United States v. First City National Bank of Houston*, 386 U.S. 361, 368.

In this case the District Court reviewed *de novo* the decision of the Commission. Such a method of review was effected under the guise of the arbitrary and capricious standard contained in Section 10(e)(B)(1) of the APA, 5 U.S.C. § 706(2)(A)(1970).

> "***The reviewing Court shall –
>
> ***
>
> "(2) hold unlawful and set aside agency action, findings, and conclusions found to be –
>
> "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;"

In resorting to the latter standard of review, the Court nullified, and rejected the application of, the correct APA standard that agency findings shall be set aside under Section 10(e)(B)(5) of the Act, 5 U.S.C. § 706(2)(E)(1970), where

> "unsupported by substantial evidence in a case subject to [5 U.S.C.] sections 556 and 557 [Sections 7 and 8 of the APA] . . .;"

The Court thus resorted to the clearly erroneous rule of F.R.C.P. Rule 52(a).[10] See *Willis Shaw Frozen Express, Inc. v. United States*, 256 F. Supp. 257, 264 (W.D. Ark. 1966) ("The court may set aside determinations of the Commission only when clearly erroneous. . . .").

The District Court further erred in rejecting the precedent established by this Court that Commission

[10] "***Findings of fact shall not be set aside unless clearly erroneous. . . .***"

decisions are subject only to a limited scope of review. By applying a broad and novel scope of review, the Court substituted its own judgment for the expert opinion of the Commission, charged by statute with final administrative authority in the motor carrier field. In so doing, the Court refused to recognize the responsibility vested exclusively in the agency to "promote . . . adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers . . . all to the end of developing, coordinating, and preserving a national transportation system . . . adequate to meet the needs of the commerce of the United States." National Transportation Policy, 49 U.S.C. preceding § 1, Historical Note (1970).

That policy is "the yardstick by which the correctness of the Commission's actions will be measured." *Schaffer Transportation Co. v. United States*, 355 U.S. 83, 87-88. This Court there stated:

> "We do not minimize the complexity of the task the Commission faces in evaluating and balancing the numerous considerations that collectively determine where the public interest lies in a particular situation. And *we do not suggest that the National Transportation Policy is a set of self-executing principles that inevitably point the way to a clear result in each case. On the contrary, those principles overlap and may conflict, and, where this occurs, resolution is the task of the agency that is expert in the field.****" 355 U.S. at 92 (emphasis added).

The reviewing Court's "task [is] to scrutinize the Commission's authority, not the substance of this exercise." *American Trucking Associations, Inc. v. Atchison, T., & S. F. Ry.*, 387 U.S. 397, 412. The Commission's informed appraisal of the facts in the



light of the National Transportation Policy must stand if there is evidence to warrant the decision. *McLean Trucking Co. v. United States*, 321 U.S. 67, 86-88.

### A. The Court was required, but failed, to apply the substantial evidence rule to the findings of the Commission.

The District Court paid lip service to, but then refused to follow, well-established principles of a limited scope of review. 364 F. Supp. at 1256 (App. 1304). Under those principles, an agency decision will be sustained if it is within the agency's statutory powers and is based on appropriate findings which, in turn, are supported by substantial evidence. If these criteria are met, the reviewing Court will sustain the agency even though it might disagree with the agency's conclusions or consider them contrary to the weight of the evidence. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 619-621; *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 488; *United States v. Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 535-536.

This limited scope of review was particularly appropriate where, as here, the District Court and Appellees attacked the exercise of the Commission's authority in the specific area of public convenience and necessity. The extent of the authority which should be granted entails not only a weighing of the evidence but the exercise of an expert judgment on the transportation problems which are involved. *United States v. Carolina Freight Carriers Corp.*, 315 U.S. 475, 489-490; *United States v. Maher*, 307 U.S. 148, 154. As this Court stated in *Interstate Commerce Commission v. Parker*, 326 U.S. 60:

> "Public convenience and necessity is not defined by the statute.***The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. [Citation omitted]. This, of course, gives administrative discretion to the Commission . . . to draw its conclusion from the infinite variety of circumstances which may occur in specific instances.***" 326 U.S. at 65.

*Accord, Illinois Central R.R. v. Norfolk & W. Ry.*, 385 U.S. 57, 66; *United States v. Pierce Auto Freight Lines, supra*, 327 U.S. at 535-536; *United States v. Detroit and Cleveland Navigation Co.*, 326 U.S. 236, 241. An administrative agency is presumed to perform properly its official duties in the absence of clear evidence to the contrary. *Permian Basin Area Rate Cases*, 390 U.S. 747, 767; *Interstate Commerce Commission v. City of Jersey City*, 322 U.S. 503, 512-513.

Rejecting in practice this limited scope of review, the District Court made no attempt to examine the record to determine whether there was substantial evidence to support the Commission's findings. The District Court circumvented the substantial evidence rule, stating, 364 F. Supp. at 1258 (App. 1307):

> "***Since these requirements [Section 10(e)(B)(1), 5 U.S.C. §706(2)(A)] are in addition to the requirement that agency action be supported by substantial evidence, a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion."

This conclusion, adopted verbatim from Appellees' proposed findings (App. 726), has no basis in law. More importantly, it makes infinite the scope of judicial review applicable to formal adjudication by Federal departments



and agencies. By its very terms, the District Court's standard of review comes into play where the party seeking judicial review, apparently or implicitly, acquiesces that there is substantial evidence to support the agency's findings.[11] The District Court's conclusion here stands for the proposition that, if the party challenging the agency action uses the magic words "arbitrary, capricious or an abuse of discretion," the Court, without more, is authorized to weigh allegedly competing evidence to reach a result different from that of the agency. The District Court should be reversed where, as here, it "misconceives the rationale" of this Court's precedent and, on an alleged principle of law, failed to affirm a decision where "on the record as a whole there is substantial evidence to support agency findings." *Central Hardware Co. v. National Labor Relations Board*, 407 U.S. 539, 547-548.

### B. The clearly erroneous rule, in effect adopted by the Court, does not apply to judicial review of administrative decisions after formal hearing on the record.

Under the guise of the arbitrary and capricious standard of review, the District Court substituted the clearly erroneous rule for the substantial evidence rule.[12] The clearly erroneous rule differs from the substantial evidence rule. As the Attorney General has pointed out, *Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 382 (1964):

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[11]Indeed, Appellees' complaint, instituting the judicial review proceeding before the District Court, contains no allegation that Commission findings were unsupported by substantial evidence.

[12]See *In Re Josephson*, 218 F.2d 174, 182 (1st Cir. 1954) (where "abuse of discretion" standard applied, "[o]ne is reminded of the 'clearly erroneous' standard in Rule 52(a)", F.R.C.P.).

". . . [T]he basic difference between the two rules is clear. The substantial evidence rule recognizes that an agency which administers a continuing regulatory program necessarily develops some degree of knowledgeability and expertness in the particular area of regulation.***The substantial evidence rule, in its practical application, recognizes this expertise.

"Under the 'clearly erroneous' rule, a reviewing court treats the findings of an administrative agency as it would the findings of a trial judge. District of Columbia v. Pace, 320 U.S. 701. . . . That rule recognizes no expertise. Both the appellate court and the trial court consist of judges. There is no general assumption that the trial judge is more expert in the special area than the appellate court judges."

The standard of substantial evidence involves "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620. This standard was adopted in the APA from this Court's decision in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229 ("such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). See S. Doc. No. 145, 76th Cong., 3d Sess. 20 (1940) ("The phrase 'substantial evidence' . . . has been selected on the basis of the adjudicated cases."); S. Doc. No. 248, *supra*, at 320-321, 414; Attorney General's Manual, *supra*, at 76.

The clearly erroneous rule, on the other hand, only applies by its very terms to "all actions tried upon the facts without a jury", where the trial Court is the fact finder. F.R.C.P. Rule 52(a). As this Court held in *United States v. U.S. Gypsum Co.*, 333 U.S. 364:



"***It [Rule 52(a)] was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since *judicial review of findings of fact of trial courts does not have the statutory or constitutional limitations on judicial review of findings by administrative agencies* or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous.' ***" 333 U.S. at 394-395 (footnotes omitted) (emphasis added).

The Court below applied to judicial review of administrative agencies a standard which for thirty-five years has been considered and rejected by Congress and the Courts. That standard is inapplicable to judicial review of the findings of fact of an administrative agency made after a formal adjudicatory hearing. *United States v. U.S. Gypsum Co., supra; Corn Products Refining Co. v. Federal Trade Commission*, 324 U.S. 726, 739 ("The weight to be attributed to the facts proven . . . and the inferences to be drawn from them, are for the Commission to determine, not the Courts."). Even if this were a situation where an administrative agency "made a choice between two fairly conflicting views [of 'pure agency law'] . . . the [reviewing] Court . . . should have enforced the [agency's] . . . order." *National Labor Relations Board v. United Insurance Co.*, 390 U.S. 254, 260.

As recommended by the Senate Judiciary Committee in 1939, what became the Logan-Walter Bill provided that

". . . any decision of any agency . . . shall be set aside if it is made to appear to the satisfaction of the [reviewing] court (1) *that the [agency's] findings of fact are clearly erroneous;* or (2) that the findings of fact are not supported by substantial evidence. . . ." §5(a), S. 915, as reported in S. Rep. 442, 76th Cong., 1st Sess. 4-5 (1939) (emphasis added).

The phrase "clearly erroneous"

> "...in the review formula...was taken from [F.R.C.P.] rule 52 with respect to the weight to be given to the findings of fact of a trial judge without a jury." S. Doc. No. 145, 76th Cong., 3d Sess. 20 (1940).

However, Congress then rejected application of this concept to review proceedings. The Logan-Walter Bill, H.R. 6324, contained provision only for the substantial evidence rule. H.R. Doc. No. 986, 76th Cong., 3d Sess. 15 (1940). This bill was vetoed by the President. *Id.* at 1.

As drafted following the President's veto, all but one of the bills embodying a proposed Administrative Procedure Act did not provide for the clearly erroneous rule in judicial review of agency adjudication. *Administrative Procedure*, Hearings Before Subcomm. of Senate Comm. on the Judiciary, 77th Cong., 1st Sess. 16-17, 34, 852-853, 1074-1075, 1078-1079 (1941) (hereafter *1941 Hearings*). Section 10(e) of the APA, as enacted or as proposed, contained no provision for application of the clearly erroneous rule.

In 1955 the Second Hoover Commission, upon recommendation of its Legal Task Force, recommended to Congress the substitution of the clearly erroneous rule for the substantial evidence rule. Commission on Organization of the Executive Branch of the Government, *Legal Services and Procedure* 76 (1955); *Task Force Report on Legal Services and Procedure* 215, 217-218, 416 (1955); see Carrow, *Administrative Adjudication: Should Its Role Be Changed?*, 27 Geo. Wash. L. Rev. 279, 281-283, 294 (1959). According to the Task Force Report, *supra*, at 218:

> "***The task force has proposed that the rules of evidence applicable to civil non-jury cases be followed hereafter in administrative proceedings conducted by Federal agencies. The task force recommends that findings of fact, based upon formal administrative records, should be set aside if clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."



This proposal, which was not accepted by Congress,

> "***[f]or many courts...would undoubtedly constitute a green light to enlarge the scope of review.***" Carrow, *supra*, 27 Geo. Wash. L. Rev. at 299.[13]

For nearly 20 years Congress has considered and consistently rejected this proposal to change the scope of judicial review in the APA. Though embodied in a proposed Code of Administrative Procedure drafted by the American Bar Association,[14] no such change was

[13] The Interstate Commerce Commission strongly opposed this provision. *Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 93, 437 (1964). So did the Association of Interstate Commerce Commission Practitioners, 23 I.C.C. Prac. J., Nov. 3-4, 1955 at 46:

> "The effect of the proposed change is fundamental. It would require the court to substitute its judgment with respect to the facts and the discretion exercised by the agency for that of the agency.***"

[14] *Administrative Procedure Act*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 89th Cong., 1st Sess. 99 (1965). Hearings on a revised APA commenced before the Senate Judiciary Subcommittee on Administrative Practice and Procedure in July 1959, see *Administrative Procedure Legislation*, Hearings Before Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 86th Cong., 1st Sess. (1959). In 1957 the American Bar Association had proposed a new Code of Federal Administrative Procedure to replace the APA, which embodied the clearly erroneous rule. S. 1070, 86th Cong., 1st Sess. (1959); S. 1887, 87th Cong., 1st Sess. (1961); see Benjamin, *A Lawyer's View of Administrative Procedure – The American Bar Association Program*, 26 Law & Contemp. Prob. 202, 223-34 (1961).

made in the judicial review provisions of the APA, despite extensive consideration of the subject matter. *E.g.*, S. 1663 and S. 2335, 88th Cong., 1st Sess. (1963); see *Administrative Procedure Act*, Hearings Before the Subcomm. on Administrative Practice and Procedure, Senate Comm. on the Judiciary, 88th Cong., 2d Sess. 40, 283, 286-287, 298, 313, 382, 401, 451, 670 (1964).

### C. The substantial evidence rule precludes exclusive application of the arbitrary and capricious standard to agency findings based on such evidence.

Nowhere did Appellees or the District Court question whether the specific findings contained in the Commission's decision were supported by substantial evidence. Noting that "the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion", the Court circumvented the substantial evidence rule, under Section 10(e)(B)(5) of the APA, 5 U.S.C. §706(2)(E), and applied only the arbitrary and capricious rule, under Section 10(e)(B)(1) of the statute, 5 U.S.C. §706(2)(A). Thus, the Court was able to find "no rational basis" for the weight given by the Commission to certain exhibits and testimony, nor could the Court "discern any rational basis" for certain of the Commission's conclusions. 364 F. Supp. at 1259-1262 (App. 1310-1316). This led to the inevitable conclusion, as worded by Appellees (App. 737), that "the findings and conclusions of the Division are arbitrary, capricious, and without rational basis". 364 F. Supp. at 1264 (App. 1319).

The Court claimed that the Commission's decision was based upon "subordinate findings that can be supported



only by a consideration of portions rather than the entire record". 364 F. Supp. at 1259 (App. 1309). But, in every adversary proceeding where factual issues are contested, conflicting evidence will be involved. In effect, the District Court held that all the evidence – not just substantial evidence – must support the Commission's findings of fact and its conclusions based thereon.

Contrary to that rationale, the statute only requires that the agency base its findings upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229. Findings based upon substantial evidence therefore can be contrary to other evidence in the record. As this Court stated in *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620:

> "***... [T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.***"

#### 1. *The legislative history of the Administrative Procedure Act does not support the District Court decision.*

The legislative history of the APA does not support the District Court's construction of the APA. As considered by the Congress in 1941, S. 674, 77th Cong., 1st Sess., "Federal Code of Administrative Procedure", provided in §311(e) thereof, in relevant part, *1941 Hearings, supra*, at 16-17:

> "(e) SCOPE OF REVIEW. – As to the findings, conclusions, and decision in any case, the reviewing court ... shall consider and decide ...

> all relevant questions of . . . (4) findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence; and (5) administrative action otherwise arbitrary or capricious. . . ."

S. 675, 77th Cong., 1st Sess., contained a substantially similar provision in §805(4) and (5) thereof. *Id.* at 34. On this subject, the following colloquy occurred between Senator Joseph C. O'Mahoney, a member of the Judiciary Committe, and the late E. Blythe Stason,[15] then Dean of the University of Michigan Law School. *1941 Hearings, supra*, at 1359-60:

> "Dean Stason. May I put it this way: *We don't have any thought of trying to work into this bill a technique of weighing the testimony and giving the court the power to reverse fact decisions if it finds the weight of the testimony running counter to the administrative order.* ***
>
> "Senator O'Mahoney. *But I take it that it is not your desire to go so far as to enable the court to substitute its findings, inferences, and conclusions, for the reasonable findings, inferences, and conclusions of the agency?*
>
> "Dean Stason. *That is absolutely correct. The court should not be given the privilege of going that far. The court should look at the whole record and if it feels that a reasonable man, acting reasonably, might have reached the decision which was reached by the administrative agency, it should let the decision alone.*" (emphasis added)

[15] Dean Stason was a member of the minority of the Attorney General's Committee on Administrative Procedure which proposed a detailed "Code of Standards of Fair Administrative Procedure." *Administrative Procedure in Government Agencies*, S. Doc. No. 8, 77th Cong., 1st Sess. 203, 217 (1941) (hereafter S. Doc. No. 8). The code was the progenitor of the bills then being considered by the Senate Committee.



Neither the Report of the Attorney General's Committee nor the legislative history of the bills, which became the APA after World War II, contain any support for the District Court's conclusion that the evidence can be reviewed under other than the substantial evidence rule where a party claims agency findings and conclusions were arbitary and capricious. As the Attorney General's Committee stated, Sen. Doc. No. 8, *supra*, at 88:

> "***The question whether the administrative finding of fact rests on substantial evidence . . . is really a question of law, for a finding not so supported is arbitrary, capricious, and obviously unauthorized."

In other words, the reviewing Court first must determine the substantiality of the evidence underlying the agency's findings. Otherwise, the Court would "determine independently which way the evidence preponderates," thus turning "administrative tribunals . . . into little more than media for transmission of the evidence to the courts." *Id.* at 91. Judicial review is expected "to *check* – not to *supplant* – administrative action. Review must not be so extensive as to destroy the values – expertness, specialization, and the like – which . . . were sought in the establishment of administrative agencies." *Id.* at 77 (emphasis in original). In considering proposed Section 10(e) of the APA, the Senate Judiciary Committee referred to the foregoing statements of the Attorney General's Committee. S. Doc. No. 248, *supra*, at 39.

> "Subsection (e) . . . seeks merely to restate the several categories of questions of law subject to judicial review. Each category has been recognized . . . . The several categories, constantly repeated by courts in the course of judicial decisions or opinions, were first established by the Supreme

Court as the minimum requisite under the Constitution. . . ."

The substantial evidence rule governs the conduct of agency proceedings and the review of agency decision where a record is made by formal adjudication under Section 7(c) of the APA, 5 U.S.C. §556(d):

> "***A sanction may not be imposed or . . . order issued except on consideration [by the agency] of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.***"

This language was inserted in the section by the House, after the Senate used the language, "relevant, reliable, and probative evidence." S. Doc. No. 248, *supra*, at 30, 207-208, 287. "***Obviously, the agency will proceed in accordance with the evidence which it finds reliable, probative, and substantial – there is no reason why the bill should not say so." *Id.* at 287, fn. 18.

Section 10(e) of the APA, 5 U.S.C. §706, requires the reviewing court to ascertain, in a case such as this, whether there has been compliance with the substantial evidence rule under Section 7(c) of the statute. The judicial review provisions of the APA, like other provisions of the Act, "are closely knit", S. Doc. No. 248, *supra*, at 194. The Act "is designed to operate as a whole, and. . .its provisions are interrelated." *Id.* at 216; see, to the same effect, 251, 305. If the substantial evidence rule embodied in two separate provisions of the APA has any statutory meaning and if the statute is designed to operate as a whole, then the arbitrary and capricious standard of judicial review never was intended to afford a judicial means of by-passing the substantial evidence rule. The error committed by the District Court has been well described by this Court in *Consolo v. Federal Maritime Commission, supra*:



> "***In effect, the standard of review applied and articulated by the Court of Appeals in this case was that if 'substantial evidence' . . . supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act." 383 U.S. at 618-619 (footnotes omitted).

**2. *Overton Park does not support the District Court decision.***

The Court below relied principally upon this Court's decision in *Citizens To Preserve Overton Park v. Volpe*, 401 U.S. 402, for its erroneous conclusion that the substantial evidence rule can be nullified by use of the arbitrary and capricious rule. The District Court stated, in part, 364 F. Supp. at 1257 (App. 1305):

> "4. In Overton Park, supra, the court pointed out that in determining whether an agency decision was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,' the reviewing court 'must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.' 401 U.S., at 416.***"

The lower Court's reliance is misplaced. Indeed, the words quoted from this Court's decision are out of context.[16]

*Overton Park* involved judicial review of an announcement by the Secretary of Transportation that he

[16]Based verbatim on Appellees' proposed findings and conclusions (App. 725). *Cf. First National Bank of Fayetteville v. Smith*, 365 F. Supp. 898, 902-903 (W.D. Ark. 1973), *appeal pending* (Nos. 74-1032 and 74-1050, argued June 13, 1974, 8th Cir.), where the Senior District Judge for the Western District of Arkansas applied this Court's holding in *Overton Park* to agency adjudication effected without a formal hearing.

had approved the route and design of a highway. The announcement was not

> "***. . . accompanied by a statement of the Secretary's factual findings. He did not indicate why he believed there was no feasible and prudent alternative route or why design changes could not be made to reduce the harm to the park." 401 U.S. at 408.

For the standard of review of that administrative action, according to the Court,

> "***. . . we must look to §706 of the Administrative Procedure Act, which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet six separate standards. In all cases agency action must be set aside if the action was 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements. *** In certain narrow, specifically limited situations, the agency action is to be set aside if the action was not supported by 'substantial evidence.' And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was 'unwarranted by the facts.' 5 USC §§706(2)(E), (F). . . .
>
> ***
>
> "Review under the substantial evidence test is authorized only. . .when the agency action is based on a public adjudicatory hearing. See 5 USC §§556, 557 . . . . [T]he only hearing that is required by either the Administrative Procedure Act or the statutes regulating the distribution of federal funds for highway construction is a public hearing conducted by local officials for the purpose of informing the community about the proposed project and eliciting community views on the design and route. *** *The hearing is nonadjudicatory, quasi-legislative in nature. It is not designed to produce a record that is to be the basis of agency action – the basic requirement for substantial-evidence review.*" 401 U.S. at 414-415 (emphasis added).



This Court did not hold in *Overton Park* that the substantial evidence rule could be ignored in the case, as here, of contested agency adjudication by resort to the arbitrary and capricious rule. The latter standard was applicable in *Overton Park* because the agency adjudication was made informally, without the kind of formal record required by Sections 7 and 8 of the APA, 5 U.S.C. §§556, 557. *See Camp. v. Pitts*, 411 U.S. 138, 141-142. It is clear from the *Overton Park* decision that, if the provisions of Sections 7(c) and 10(e)(B)(5) of the APA, 5 U.S.C. §§556 and 706(2)(E), are to have any applicability to formal agency decision, *see Weinberger v. Hynson, Wescott & Dunning*, 412 U.S. 609, 622, fn. 19, the arbitrary and capricious standard in Section 10(e)(B)(1), 5 U.S.C. §706(2)(A), cannot be used to bypass the substantial evidence rule.

Indeed, if the agency findings are supported by the substantial evidence on the whole record, the findings, *ipso facto*, cannot be arbitrary, capricious, or an abuse of discretion. Thus, under *Overton Park*:

> "The [reviewing] court is authorized to hold a trial de novo in two instances. First, it may redetermine facts originally found in an adjudicatory action if the agency used inadequate factfinding procedures. Second, the court may find facts 'when issues that were not before the agency are raised in a proceeding to enforce nonadjudicatory agency action.' [401 U.S. at 415].
>
> *"The 'substantial evidence' test affirms agency action if reasonably supported by the record.* It

is to be used 'only when the agency action is taken pursuant to a rulemaking provision . . . or when . . . based on a public adjudicatory hearing.' [401 U.S. at 414].

> *"In all other cases, agency action will be set aside only if it is unconstitutional, outside the scope of agency authority, or 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law.'* This was the standard of review applied in Overton Park." McCabe, *Recent Developments in Judicial Review of Administrative Actions: A Developmental Note*, 24 Adm. L. Rev. 67, 95 (1972) (emphasis added).

See, to the same effect, Note, *Recent Changes in the Scope of Judicial Control over Administrative Methods of Decision Making*, 19 Ind. L. J. 118, fn. 1 (1973).

***3. Other cases upon which the District Court relied do not support its decision.***

The other cases upon which the District Court relied do not support its holding. 364 F. Supp. at 1256-1257 (App. 1305).[17] The partial quotation by that Court from *Columbia Shippers & Receivers Ass'n, Inc. v. United States*, 301 F. Supp. 310, 319-320 (D. Del. 1969), does not support the lower Court's conclusion that the application of the substantial evidence rule to agency findings of fact, made after formal adjudication, can be overridden by resort to the arbitrary and capricious rule. In *Columbia Shippers*, the Court applied the arbitrary and capricious rule to a Commission conclusion of law.

> "Turning next to the Commission's determination that Columbia's practice of co-loading with other non-profit shippers' associations does not contravene the Act, *this issue being primarily a legal rather than a factual one*, the Court must apply, in addition to the 'substantial evidence' test generally

[17] Copied from Appellees' proposed findings (App. 725).



> applicable to this action, the standard of review set forth at 5 U.S.C. §706(2)(A):
>
> " '***the reviewing court shall
>
> ***
>
> " '(2) hold unlawful and set aside agency action, findings, and conclusions found to be–
>
> " '(A) arbitrary, capricious, an abuse of discretion, or *otherwise not in accordance with law.*'
>
> *Accordingly, the Court's focus on review is whether the evidence and the law will support the conclusion that Columbia's practice of co-loading with other non-profit shippers' associations does not bring Columbia within the terms of the provisions regulating freight forwarders. . . .*" 320 F. Supp. at 319-320 (emphasis added).

In *Columbia* there was no factual dispute on the issue of co-loading. This was the question to which the Court addressed itself in that part of the opinion relied upon by the District Court in this case. The *Columbia* Court concluded that, as a matter of statutory construction, the practice of co-loading was not an activity "subject to regulation" under the Interstate Commerce Act. 301 F. Supp. at 321. This was an issue of law to which the standard of 5 U.S.C. §706(2)(A) applied. It was not an issue of fact controlled by the substantial evidence rule of 5 U.S.C. §706(2)(E).

None of the other authorities, cited by Appellees and relied upon by the District Court, support its decision. None of them involved the substitution of the arbitrary and capricious rule for the substantial evidence rule in reviewing an agency decision based upon a formal hearing on the record.[18]

[18] *Eastern Central Motor Carriers Ass'n v. United States*, 239 F.Supp. 591, 594, 601 (D.D.C. 1965) (no fact issues involved; no rational basis for Commission failure to require "full

Indeed, *Mitchell Bros. Truck Lines, Inc. v. United States*, 225 F. Supp. 755 (D. Ore. 1963), *aff'd per curiam*, 378 U.S. 125, supports the contrary. Carefully distinguishing between the different standards of review applicable to the facts and the law, the Court stated:

> "We have carefully considered the other points and contentions made by plaintiff. The rulings of the Commission thereon were neither arbitrary nor capricious. *The Commission's findings, on each point raised by plaintiff, are supported by substantial evidence. To consider the weight of that evidence or the soundness of the reasoning by which the Commission reached its conclusions, is outside the province of this Court.****" 255 F. Supp. at 760 (emphasis added).

production of evidence" as to costs in rate-making proceeding); *Campbell Sixty-Six Express, Inc. v. United States*, 258 F.Supp. 529, 532, 535 (W.D. Mo. 1966) (there being "no material factual issues in this case," substantial evidence rule was not involved; "facts as found . . . do not supply any rational basis for the [legal] conclusion that the intervenor is now 'actually' in competion with these plaintiffs"); *Nashua Motor Express, Inc. v. United States*, 230 F. Supp. 646, 648, 650 (D.N.H. 1964) (in a case where "precise facts . . . are not at all clear", conclusions leaped to by Commission not supported by "requisite subordinate findings"); *Heavy-Specialized Carriers Conference v. United States*, 231 F.Supp. 968, 970 (E.D.Mo. 1964) (Commission "interpretation of a certificate issued by the ICC is properly with the ICC and not the courts"; hearing transcript supports factual findings); *Youngblood Truck Lines, Inc. v. United States*, 221 F. Supp. 809, 819 (W.D.N.C. 1963) ("Commission's findings of fact are supported by substantial evidence; . . . its conclusions of law are free of error"); *Omaha Grain Exchange v. United States*, 194 F. Supp. 929, 934, 936 (D. Neb. 1961) (in rate-making proceeding, substantial evidence rule applied to facts and abuse of discretion rule applied to legal conclusions; Commission order affirmed); *Stott v. United States*, 166 F. Supp. 851, 855, 856, 858-859 (S.D.N.Y. 1958) (Commission order approving exchange ratio in railroad merger affirmed; "substantial evidence" rule applied to facts; no error of law in Commission conclusions).



## II.

## IN ITS ERRONEOUS METHOD OF REVIEW, INVOLVING VERBATIM ADOPTION OF APPELLEES' PROPOSED FINDINGS AND CONCLUSIONS, THE DISTRICT COURT COMMITTED SUBSTANTIAL ERRORS.

In weighing the evidence under an improper standard of review, the Court, by the verbatim adoption of Appellees' proposed findings and conclusions, committed further errors of fact and law.[19] The Court below "missed the very essence of the judicial function in this case – the actual adjudication of the issues of law and fact." *Ayrshire Collieries Corp. v. United States*, 331 U.S. 132, 138. The guidelines laid down by this Court in *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, were not followed:

> "***Those [District Court] findings, though not the product of the workings of the district judge's mind, are formally his. . . .*** Those drawn with the insight of a disinterested mind are, however, more helpful to the appellate court.*** Moreover, these detailed findings were 'mechanically adopted' . . .and do not reveal the discerning line for decision of the basic issue in the case.***" 376 U.S. at 656-657.

Here, the District Court did not even "pick and choose and temper and select those portions [of findings and conclusions proposed by all parties] which better fit its own concept of the case." *Bradley v. Maryland Casualty Co.*, 382 F.2d 415, 423-424 (8th

[19]The submission of proposed findings and conclusions is a practice rarely encountered before an appellate tribunal.

Cir. 1967). Indeed, the review provided in this case hardly comports with the kind of review envisioned by Congress under 28 U.S.C. §2325.[20] The District Court's review was a clear example of the situation where ". . .the courts . . . substitute their or *counsel's discretion* for that of the Commission [which] is incompatible with the orderly functioning of the process of judicial review." *Burlington Truck Lines v. United States*, 371 U.S. 156, 169 (emphasis added).[21]

### A. Substantial factual errors were committed by the Court in its de novo review of the record.

The District Court adopted erroneous findings of fact proposed by Appellees. Some more egregious examples of such errors follow. They should demonstrate to this Court the unwarranted standard of review used by the District Court.

[20]The procedure followed by the Court below has been condemned by the other Circuits. The continuation of Three-Judge District Court review of Commission decisions also has been questioned. Burger, C.J., *Report on the Federal Judicial Branch*, 94 S. Ct. 3, 5 (1973); Staff of Senate Comm. on the Judiciary, 93d Cong., 1st Sess., Judicial Review of Decisions of the Interstate Commerce Commission 2-3 (Comm. Print 1973) ("The Burden of Three-Judge Courts"); see *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 128-129; *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 92-93 (dissent by Frankfurter, J.); *Phillips v. United States*, 312 U.S. 246, 250.

[21]*Accord, In Re Las Colinas, Inc.*, 426 F.2d 1005, 1010 (1st Cir. 1970), *cert. denied*, 405 U.S. 1067; *United States v. Forness*, 125 F.2d 928, 942 (2d Cir. 1942), *cert. denied*, 316 U.S. 694; *Roberts v. Ross*, 344 F.2d 747, 751 (3d Cir. 1965); *Featherstone v. Barash*, 345 F.2d 246, 251 (10th Cir. 1965); *Chicopee Manufacturing Corp. v. Kendall Co.*, 288 F.2d 719, 724-725 (4th Cir. 1961), *cert. denied*, 368 U.S. 825.



*Transit Studies*.[22] The Court stated that "[t]he pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. . .", 364 F. Supp. at 1250 (App. 1293). Noting that the Appellees' studies "constituted the most important part of [their] evidence," 364 F. Supp. at 1259 (App. 1310), the Court castigated the Commission for acting "*ex mero motu*" in finding that Appellees' transit time studies "were entitled to little weight," thereby "depriving . . . [them] of any opportunity to defend their propriety or correct the alleged deficiencies". 364 F. Supp. at 1252 (App. 1295).[23] The record shows that Appellant Johnson challenged Appellees' studies in its March 24, 1970 exceptions (pp. 25-27) and in its reply dated August 16, 1972, to Appellees' petitions for reconsideration of the Commission's decision. The Commission did not act on its own motion.

In addition, the Court criticized the Commission for subjecting the Appellees to a "changed standard" with regard to transit time studies, which they were given no opportunity to meet. 364 F. Supp. at 1260 (App. 1312). However, the Commission has on several occasions accorded greater weight to transit studies of disinterested public witnesses than to studies of protestants performed for short periods when faced with the possibility that competitive service might be authorized. *Strickland Transportation Co., Inc., Exten-*

[22]Transit studies generally abstract shipping document data measuring the time freight was in transit from its origin to its ultimate destination in single line service or from its origin to point of interchange in joint line service. A shipment transported in "single line service" is originated and delivered by the same carrier. When transported in "joint line service", it originates on the line of one carrier and is delivered on the line of another.

[23]This is the same as Appellees' proposed finding (App. 715).

*sion – Louisiana Routes*, 77 M.C.C. 655, 663 (1958), *sustained sub nom., T.S.C. Motor Freight Lines, Inc. v. United States*, 186 F. Supp. 777, 791 - 792 (S.D. Tex. 1960); *Braswell Motor Freight Lines, Inc., Extension-Atlanta*, 100 M.C.C. 482, 493-494 (1966), *rev. sub nom., Dixie Highway Express, Inc. v. United States*, 268 F. Supp. 239 (S.D. Miss. 1967), *rev. sub nom., United States v. Dixie Highway Express*, 389 U.S. 409 (ICC affirmed).

Similarly, the Court rebuked the Commission for its alleged failure to consider recently-issued single line authorities as a part of the total competitive situation. 364 F. Supp. at 1253-1254 (App. 1299). The Commission's report expressly discussed those authorities and took them into account in deciding whether, and to what extent, the public convenience and necessity required authorization of additional service.[24] 114 M.C.C. at 574-576, 585-586, 600, 611, 627, 631 fn.6, 634, 759, 762, 764, 771-772, 777, 779, 782, 784, 792 (App. 104-106, 115-116, 130, 157, 173, 177 fn. 6, 180, 321, 324, 326, 333-334, 339, 341, 344, 346, 354).

Conclusions 12-18 of the District Court clearly reflect the Court's misunderstanding of the Commission's treatment of transit studies presented by Applicants, shippers, and Protestants. 364 F. Supp. at 1259-1261 (App. 1310-1314). While the Court stated that the Commission compared the studies presented by Applicants with those presented by Protestants, 364 F. Supp. at 1259-1260 (App. 1310-1311), such was not the case. The Commission only compared the transit time studies of supporting shippers with those of Protestants, on the issue of the adequacy of existing service. 114 M.C.C. 599 (App. 129). On the other hand,

[24]See also pp. 18-19 and App. C, Jurisdictional Statement, Bowman Transportation, Inc., No. 73-1055.



the Commission considered Applicants' transit studies solely on the question of the feasibility of their proposed operations. 114 M.C.C. 611 (App. 157).

The Court also erroneously stated that the shippers' studies " 'comprised only a *few* shipments made over a very extensive period of time,' whereas all protestants' studies included *all* shipments handled during the periods covered." 364 F. Supp. at 1251 (App. 1294) (emphasis in original). This phrase is a partial quotation taken out of context from the examiners' decision, which read in full: "In other instances [the shippers' studies] comprised only a few shipments made over a very extensive period of time; *and in some instances the bills represented substantially all shipments in a given period between certain points or areas*" (App. 876-877) (emphasis added). Only 2 carriers presented exhibits concerning movements prior to the notice of hearing. Seventy-eight of the shippers supporting the applications sponsored exhibits which covered movements in 1965, and 5 covered movements in 1964.

*Inadequate Service.* The Court conceded that, according to the examiners, "[m]ost shippers generally expressed dissatisfaction with inconsistent and excessive transit time" and "expressed other criticisms of existing service, including the pickup and delivery of shipments. It was also shown that certain carriers maintain various types of formal or informal restrictions as to certain types of traffic, while others fail to render consistent service to authorized points. . . ." 364 F. Supp. at 1245-1246 (App. 1283).[25] By themselves, these facts provide the substantial evidence for the Commission's

[25]A compilation of the examiners' findings with respect to inadequate service appears as Exhibit D to the Brief of Appellant Lorch-Westway Corporation et al. before the District Court.

findings of inadequate service. 114 M.C.C. 596-598 (App. 126-128).

The decision of the District Court requires the Commission to accord equal weight (1) to evidence of defects in the operations of an applicant for a certificate and (2) to evidence of inadequate service by a protestant to the application. 364 F. Supp. at 1252 (App. 1296-1297). The Commission repeatedly has rejected this requirement. *Spector Freight System, Inc., Extension–Whitley County, Indiana*, 111 M.C.C. 889, 893 (1970); *East Texas Motor Freight Lines, Inc., Extension–Mississippi and Louisiana Points*, 115 M.C.C. 122 (1972). Indeed, one of the Appellees was certificated during the course of this case notwithstanding its failure to accept shipments required to be transported by its existing certificates. *Campbell Sixty-Six Express, Inc., Extension*, 108 M.C.C. 80, 81 (1968).

*Exceptions to Examiners' Report.* The Court accepted Appellees' claim that, "applicants [Appellants] had not challenged any specific findings of the Examiners . . ." and that Appellants failed to challenge the accuracy of the examiners' findings respecting the testimony of the public witnesses. 364 F. Supp. at 1250 (App. 1292). Appellant motor carriers did except to certain of the examiners' findings, as well as to their conclusions. For example, Johnson's exceptions claimed that the examiners "failed to fairly consider, evaluate, and make essential findings with respect to the public witness testimony" (Exceptions, Mar. 24, 1970, p. 14). Bowman's exceptions stated that the examiners "erred in considering all ten applications collectively", "failed



to give effect to multiple complaints", "grouped witnesses according to commodities", based their report on broad generalities without specific findings, and considered testimony only in relation to commodities shipped to the exclusion of territories and points involved. (Exceptions, Mar. 10, 1970, pp. 13-23). Shippers excepted to major conclusions of the examiners which embodied subordinate findings of fact. (Exceptions, Mar. 24, 1970, pp. 22-23).[26]

*Shippers' Exceptions.* The Court found that "shippers' contentions were more political than judicial". 364 F. Supp. at 1255 (App. 1302). The agency "should not have permitted such parties to inject new issues, particularly since the Examiners were given no opportunity to rule upon such issues". 364 F. Supp. at 1263 (App. 1318).

The initial exceptions filed by Shippers March 24, 1970, related to the examiners' findings concerning anti-trust matters and their rejection of the public need for improved and expanded service. Supplementary exceptions filed August 20, 1971, updated the initial filing but were never accepted for the record by the Commission. 114 M.C.C. at 577 (App. 107). That "competition is our fundamental national economic

[26]Indeed, the Commission can review error in a hearing examiner's decision without exception with respect thereto. Section 8(b) of APA, 5 U.S.C. §557(b) (1970); ICC Rule of General Practice 97, 49 C.F.R. §1100.97 (Supp. 1973).

policy," *United States v. Philadelphia National Bank*, 374 U.S. 321, 372, is not a political issue. Exceptions based upon specific findings and conclusions of the examiners hardly involve "new" issues.

**B. Substantial legal errors were committed by the Court in its de novo review of the record.**

*Role of Hearing Examiners.* The District Court accorded overwhelming weight to the examiners' report, to override the Commission's decision. 364 F. Supp. at 1245-1250 (App. 1282-1291). Such a result contradicts both statute and case law.

The hearing before the examiners was conducted as a contested proceeding on the record pursuant to Section 205(c), (d), and (e) of the Interstate Commerce Act, 49 U.S.C. §305(c), (d), (e) (1970). A hearing involving the issuance of certificates of public convenience and necessity under Section 207 of that Act, 49 U.S.C. §307 (1970), is a hearing on the record subject to the provisions of the APA. *Minneapolis & St. Louis Ry. v. United States*, 361 U.S. 173, 192.

The report of the examiners was solely an initial decision pursuant to Sections 7 and 8 of the APA, 5 U.S.C. §§556 and 557 (1970). Under the latter section:

> "(b)***On appeal from . . . the initial decision [of hearing examiners], the agency has all the powers which it would have in making the initial decision . . .***"

Under this statute, as the Senior District Judge conceded in granting a temporary restraining order, "[t]he Commission is not bound by the findings of the



hearing officers and is free to reach conclusions upon the evidence contrary to those of its examiners." *Arkansas-Best Freight System, Inc. v. United States*, 350 F. Supp. 539, 544 (W.D. Ark. 1972).

The relationship between the examiners and the Commission was not the same relationship which existed between the Commission and the District Court. The Commission exercises all of the authority conferred upon it by statute. It can properly substitute its own judgment for the judgment of the examiner and itself reach an initial decision. The power of decision remains in the agency under 5 U.S.C. §557(b) and not in the examiner. 2 K. Davis, *Administrative Law Treatise* §10.04 (1958, Supp. 1970). "The Commission is not bound by the examiner's conclusions. Rather, the Commission is free to make its own independent determinations." *Frozen Food Express, Inc. v. United States*, 301 F. Supp. 1322, 1324 (N.D. Tex. 1969).

In *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 493, this Court held that the examiner's decision is only part of the whole record which the Court must review to determine if there is substantial evidence to support the Commission's decision. This holding was further explained in *Federal Communications Commission v. Allentown Broadcasting Corp.*, 349 U.S. 358.

In that case this Court reversed a Court of Appeals' decision which held that an examiner's findings could not be overruled by the agency unless there was a " 'very substantial preponderance in the testimony as recorded.' " 349 U.S. at 364. The Supreme Court stated that the FCC could not be limited to the "clearly erroneous" rule embodied in Rule 52(a), F.R.C.P., when reversing decisions of the examiner. The statute gave to the Commission, not to the examiner, the power to rule on the facts and the law. Therefore, the

relevant inquiry for the Courts was whether there was substantial evidence on the record as a whole to support the Commission's decision. 349 U.S. at 364-365.

In *Lorain Journal Co. v. Federal Communications Commission*, 122 U.S. App. D.C. 127, 351 F.2d 824 (1965), *cert. denied*, 383 U.S. 967, the petitioners complained that the FCC, in reversing the examiners' findings, did not give sufficient weight to the examiners' decision. The Court stated:

> "***But their [examiners'] authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous, FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364 . . . (1955). *The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance.*" 122 U.S. App. D.C. at 131, 351 F.2d at 828 (emphasis added).

Thus, the Court held that it must sustain the Commission's decision if supported by substantial evidence, "even though there is also the contrary conclusion of substantial evidence to support the examiners". *Id. Accord, Towne Services House Goods Transportation Co. v. United States*, 329 F. Supp. 815, 820 (W.D. Tex. 1971).

While a reviewing Court must look to the examiner's report as part of the whole record, such a report remains only a part of the record. It cannot be used, as here, as a method of negating the Commission's decision. Under the novel theory of law adopted by the District Court, the role of hearing examiners has been exalted to that of final decision, even where, as here, the agency with statutory responsibility in the motor



carrier field reaches contrary conclusions. The result of the Court's action is to nullify the letter and the spirit of the Administrative Procedure Act and the Interstate Commerce Act.

*Opportunity to Remedy Service Deficiencies.* The District Court copied some of the examiners' findings with respect to evidence of inadequate existing service. The Court also adopted the position of the examiners that improvement of existing services first should be made by " 'the exercise of more diligence and care by the existing carriers and shippers'." 364 F. Supp. at 1249 (App. 1290). In effect, the Court thus held that the Commission must grant existing carriers an opportunity to remedy their own deficiencies before authorizing proposed service by other carriers. This is squarely contrary to *United States v. Dixie Highway Express, Inc.*, 389 U.S. 409, which held that:

> "The District Court erred in holding that it is the invariable rule of the Commission to grant existing carriers an opportunity to remedy deficiencies in service, and in holding that carriers have a property right to such opportunity before a new certificate may be issued upon a lawful finding of public convenience and necessity pursuant to the statute. The Commission's power is not so circumscribed.***" 389 U.S. at 411.

*Adverse Economic Consequences to Appellees.* The examiners found a "very serious economic effect which the *10* applications *collectively* may have upon existing carrier services" (App. 889) (emphasis added). The Commission evaluated each of the eight then remaining applications and reached the conclusion that the public interest warranted the grant of three applications. 114 M.C.C. 599-611, 615-622 (App. 131-157). The District Court ignored this evaluation by the agency. It found that Appellees would be adversely affected by the grant

of three applications, disregarding the fact that the examiners, upon whose report the Court chiefly relied, had found such adverse effect only if all ten applications were granted. 364 F. Supp. at 1262 (App. 1316-1317).

While the Commission "should consider the public interest in maintaining the health and stability of existing carriers", *United States v. Dixie Highway Express, Inc.*, 389 U.S. 409, 411, the fact that a proposed service may cause existing carriers to lose considerable traffic and the income therefrom, *Atlanta-New Orleans Motor Freight Co. v. United States*, 197 F. Supp. 364, 370 (N.D. Ga. 1961),

> "...has never been considered a violation of National Transportation Policy such as to afford grounds for refusing an applicant a certificate of public convenience and necessity. ***
>
> " 'Competition among public carriers may be in the public interest and the carrier first in business has no immunity against future competition. [Citations omitted]. Even though the resulting competition causes a decrease of revenue from one of the carriers, the public convenience and necessity may be served by the issuance of a certificate to a new competitor.' "

In this case the Commission specifically considered and correctly evaluated the adverse effect of the three grants of authority on existing carriers, 114 M.C.C. at 601-602 (App. 131-132):

> "Turning to the quantum of motor carrier service for which a public demand or need has been established on the record before us, we have already expressed our view that, considering the existing authorized services currently available in and between the considered territories, the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants and that the authorization of all such services could lead to unhealthy, if not cutthroat, competition inimical to the public interest. By the same token, there is on this record presented such substantial evidence of widespread public dissatisfaction with available transportation services (principally joint-line in nature) from, to, and between the areas here under consideration, as well as indications of a rapidly increasing demand therein for added motor carrier service of a direct, single-line nature, that the issuance of authority to only one of the remaining eight applicants would not be responsive to the public transportation requirements in these territories. Considering all these factors, . . . we conclude that the volume of traffic moving and to be moved within and between the considered territories supports, and the public interest requires, the issuance of somewhat competitive and overlapping authorities to Red Ball, Bowman, and Johnson."



## III.

## THE CASE SHOULD BE REMANDED TO THE DISTRICT COURT WITH DIRECTIONS TO AFFIRM THE COMMISSION'S ORDER.

In its order refusing to remand the case to the Commission, the District Court stated that:

> "If this were to be done, the Commission would have before it an extensive record dealing with five and six year old facts. It is apparent, as a matter of law, that such facts could not lawfully support a finding of public need for additional motor carrier service in 1973 or 1974.*** " 364 F. Supp. at 1269 (App. 815).

In effect, nine years of what the Commission called "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier applications", 114 M.C.C. 573 (App. 103), is to be set at naught as merely being of "historical value". 364 F. Supp. at 1270 (App. 817).

This Court can find, on the basis of the Commission's decision, that substantial evidence supports the agency findings of fact upon which the ultimate findings and conclusions of the Commission are based. Indeed, neither the District Court nor Appellees have ever challenged those findings under the substantial evidence rule. Further, the agency record is not "stale". With this factual basis, this Court should remand the case to the District Court with directions to affirm the agency decision.

### A. The Commission's findings of fact were supported by the substantial evidence recited in the Commission's decision itself.

The Commission's report clearly sets forth the facts upon which it based its conclusion that the applications of Bowman, Johnson and Red Ball should be granted. In limiting the grant of authority to three carriers, the Commission cited its earlier decision in *Motor Freight Corp. Extension–Pottawattamia County, Iowa*, 106 M.C.C. 654, 657 (1968), where the agency stated that "[m]ultiple-application proceedings require care not only to avoid the proliferation of operating authorities not needed by the shipping public, but also . . . [to



select those] carriers with the ability to perform the proposed service." 114 M.C.C. 601 (App. 131). After noting that "the volume of traffic here shown to be moving by the supporting public witnesses would not sustain the added services and operations proposed by all eight applicants" (*id.*), the Commission concluded, 114 M.C.C. 599 (App. 129):

> "***In our opinion, the applications of Red Ball, Bowman, and Johnson should be granted to the extent set forth in our findings. The evidence considered in its entirety is convincing that the additional services so to be authorized will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public."

The Commission found that three of the ten applications should be approved and that Bowman, Red Ball, and Johnson were best suited to meet the demonstrated public needs for an improved transportation service. 114 M.C.C. 601-602 (App. 131-132). The Commission's recognition and application of the substantial evidence detailing the increasing transportation importance and need of the Southeastern and Southwestern areas was in accord with its prior holdings. *Herrin Transportation Company, Extension–Jacksonville*, 69 M.C.C. 629, 637-638 (1957); *Roadway Express, Inc., Extension–Birmingham, Dallas, Houston*, 82 M.C.C. 689, 701 (1960).

The testimony and documentary evidence of the growth and transportation needs of the involved areas furnished substantial evidence on this record for the Commission's findings of public need in this case and

that Bowman, Johnson and Red Ball were best suited to fill that need: Bowman, 114 M.C.C. 584-586 (App. 114-116); Johnson, 114 M.C.C. 586-589 (App. 116-119); Red Ball, 114 M.C.C. 580-582 (App. 110-112). The needs of the public and the inadequacies of the existing service in each of the different territories proposed to be served by each of the three carriers were discussed by the Commission at length. 114 M.C.C. 591-598 (App. 121-128). Finally, the Commission carefully detailed the evidence supporting its findings that each of the three would serve a demonstrated public need: Bowman, 114 M.C.C. 604-609 (App. 150-155); Johnson, 114 M.C.C. 609-610, 611 (App. 155-156, 157); Red Ball, 114 M.C.C. 602, 603-604 (App. 132, 149-150). The Court completely disregarded these facts and failed to examine each of the three grants of operating authority on the basis of the substantiality of the findings and the adequacy of the evidence upon which each was grounded. *Akers Motor Lines, Inc. v. United States*, 352 F. Supp. 606, 612 (W.D. N.C. 1973).

The Commission found that some protestant carriers had published service restrictions and embargoes and that others had refused outright to handle traffic. 114 M.C.C. 596 (App. 126). This finding was supported by the substantial evidence of "about 70 of the shippers located at points in a total of 16 states". (*Id.*). The Commission described examples of these specific documented refusals and properly found that

> "***Other protestants generally refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond their gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers." 114 M.C.C. 597 (App. 127).



The Commission found that the transit times of existing carriers were inconsistent and excessive. This finding was supported by the substantial evidence of "[a]pproximately 650 shippers" who complained about such inconsistent and excessive transit times. In corroboration of this testimony, "over 200 [shippers] introduced transit time studies demonstrating the undependable service they currently receive." 114 M.C.C. 596 (App. 126). The Commission found inadequate pickup and delivery service on the basis of the substantial evidence of "about 150 shippers located throughout 18 states." 114 M.C.C. 597 (App. 127). The Commission also stated that interline difficulties were unreasonably delaying the movement of traffic on the basis of the substantial evidence of "[a]pproximately 110 shippers." (*Id.*). Serious deficiencies also were found in existing transportation services by reason of loss and damage to shipments, tracing difficulties, and misrouting. This finding was based upon the substantial evidence of "about 200 shippers". (*Id.*).

The Commission found that a substantial number of shippers and receivers of freight throughout the involved territories were receiving complaints from customers because of inadequate existing service which had resulted in the shippers losing customers, business, and short-term discounts. These findings were based upon material evidence of "[a]pproximately 80 shippers in a total of 14 Southeast, Southwest and Midwest States". 114 M.C.C. 598 (App. 128, fn. 36).

These material findings based upon substantial evidence warranted the Commission's ultimate conclusion that the discharge of its duty to carry out the purposes of the Interstate Commerce Act and the National Transportation Policy required it to provide additional transportation service through the grant of authority to the three Appellant carriers. 114 M.C.C. 612-614 (App. 158-160).

**B. An "extensive record dealing with five or six year old facts" neither invalidates the Commission's decision nor prevents affirmance of that decision by this Court.**

Hearings in this case commenced in March 1966 and were concluded in August, 1967. The hearing examiners issued their report more than two years later in November, 1969. The case was submitted to Division 1 of the Commission in August, 1970. The latter's decision was issued December 30, 1971. As the result of Appellees' vigorous procedural steps, the Commission's decision became final and appealable on September 6, 1972. The District Court's decision was issued over a year later on September 11, 1973. In that decision the Court held that the "extensive record dealing with five or six year old facts" could not support the grant of a certificate in "1973 or 1974." 364 F. Supp. at 1269 (App. 815). In other words, according to the Court below, the record was "stale."

This Court's precedent invalidates the holding. *United States v. Interstate Commerce Commission (Northern Lines Merger Cases)*, 396 U.S. 491; *United States v. Pierce Auto Freight Lines*, 327 U.S. 515; *Interstate Commerce Commission v. City of Jersey City*, 322 U.S. 503. See *Chicago & N.W.R.R. v. Atchison, T. & S. F. Ry.*, 387 U.S. 326, 356 ("Thirteen years have elapsed since the complaints in this [rate] case were first filed.").

In *Jersey City*, after a seven-year proceeding (1937-1944) involving two hearings, two Commission decisions, and at least three Court decisions, this Court sustained the agency's refusal to reopen the hearing because the record was allegedly "stale".



> "***The Price Administrator's contention is that this record is 'stale' and that a fresh record is important. One of the grounds of resistence to administrative orders throughout federal experience with the administrative process has been the claims of private litigants to be entitled to rehearings to bring the record up to date and meanwhile to stall the enforcement of the administrative order. *Administrative consideration of evidence* - particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it - *always creates a gap between the time the record is closed and the time the administrative decision is promulgated.* This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. *If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.* ***" 322 U.S. at 514 (emphasis added).

In *Pierce Auto*, after at least six years of proceedings (1939-1945), the District Court remanded the cases involved to the Commission "to determine [an applicant's] . . . fitness 'to initiate and maintain one of [the trucking] lines in view of present conditions.'" 327 U.S. at 534. This Court held this action "unwarranted." *Id.*

> "We think the [District] court misconceived not only the effects of the Commission's action in these cases but also its own function. It is not true, as the opinion stated, that '. . . the courts must in a litigated case, be the arbiters of the paramount public interest.' This is rather the

> business of the Commission, made such by the very terms of the statute. The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law." 327 U.S. at 535-536 (footnotes omitted).

The *Northern Lines Merger Cases* involved a record spanning the years 1961-1968, when review of the proceedings were initiated in the District Court. This Court's decision was issued two years later. The Commission's refusal in 1967 to permit up-dating of the record was held "not an abuse of discretion nor did it deny the appellant due process of law [citing *Jersey City*]." 396 U.S. at 520-521.

The drastic change in economic conditions resulting from the Depression, warranting a finding of a "stale" record, *Atchison, T. & S.F. Ry. v. United States*, 284 U.S. 248, provides no basis whatsoever for the District Court's finding. This is not a case where the "record pertains to a different economic era and furnishes no adequate criterion of present requirements." 284 U.S. at 261. That decision, of course, has been "promptly restricted . . . to its special facts, United States v. Northern P. Ry. Co., 288 U.S. 490, . . . and it stands virtually alone." *Interstate Commerce Commission v. City of Jersey City, supra*, 322 U.S. at 515. *Accord, United States v. Pierce Auto Freight Lines, supra*, 327



U.S. at 534-535; *Ann Arbor R.R. v. United States*, 368 F. Supp. 101, 110 (E.D. Pa. 1973); see 1 K. Davis, *Administrative Law Treatise* §8.18 at 603 (1958, Supp. 1970).

The District Court's decision ignored the Commission's consideration of changes in motor carrier operations in the areas affected by the grant of the three applications. 114 M.C.C. 574-576, 578, 585, 586, 600, 611, 627, 631, 635, 759, 762, 764, 771, 772, 777, 779, 782, 784, 792 (App. 104-106, 108, 115, 116, 130, 157, 173, 177, 181, 321, 324, 326, 333, 334, 339, 341, 344, 346, 354). As the Commission stated, 114 M.C.C. 576 (App. 106):

> "As indicated in Appendix D [App. 170-181], certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. [Citations omitted]. Accordingly, the actions affecting protestants have been noted in Appendix G [App. 319-356] and those actions affecting carriers not parties to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations." (footnote omitted).

Indeed, three of the Appellees received additional common carrier authority during the pendency of this

proceeding as late as 1970.[27] For these Appellees to claim (App. 737), and the Court to agree verbatim, 364 F. Supp. at 1264 (App. 1319), that the entire record in this proceeding was "stale" during a time period when the Commission authorized an increase in their own operations is to claim inequitably the benefits, but not the vicissitudes, of the passage of time. The District Court's failure to note these facts in the record shows the error of its opinion with respect to alleged staleness.

### C. The District Court should be directed to affirm the Commission's order.

As the District Court itself stated, "[t]here must be an end to litigation." 364 F. Supp. at 1264 (App. 1319). Substantial support exists on the record before this Court to sustain the Commission's grant of the three certificates to Bowman, Red Ball, and Johnson. The Commission's action was proper under the circumstances. To remand the case to the District Court for further consideration would prolong an already lengthy proceeding and further postpone needed carrier service in the Southeastern and Southwestern areas of the United States.

As this Court stated in *Consolo v. Federal Maritime Commission*, 383 U.S. 607:

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[27]Braswell (Sub-No. 17), Campbell Sixty-Six (Sub-No. 106), and Mercury Freight (Sub-Nos. 11 and 12), see U.S. proposed findings to the District Court (App. 613). These applications were among the ten not selected for consolidation in the administrative proceeding now before this Court. Each of these Appellees, as applicants, stated under oath that a public need existed for the service each proposed. Section 206(b) of the Interstate Commerce Act, 49 U.S.C. §306(b) (1970). Each duplicated, to some extent, service to the territory which Appellants were authorized to serve.



> "Ordinarily we would be inclined to remand to the Court of Appeals for further consideration in light of the standard of review established by the Administrative Procedure Act. [Citations omitted]. However, in view of the fact that this controversy already dates back more than eight years, that it has been before the Court of Appeals twice and that the relevant standard is not hard to apply in this instance, we think this controversy had better terminate now. See O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 504. . . ." 383 U.S. at 621.

The same rule of practical judicial administration has been applied in ICC cases. *Illinois Central R.R. v. Norfolk & W. Ry.*, 385 U.S. 57.

> "Appellees also insist that a new hearing be held so that evidence of 'present conditions' could be presented to the Commission rather than 'speculation.' It is true that this case has been pending for 10 years but this, rather than being a reason for holding additional hearings, operates to the contrary. We have concluded that the orders of the Commission were proper under the circumstances. We have found substantial support for its actions. Accordingly, it is our view that this matter be concluded.
>
> "The judgment is therefore reversed and the case is remanded to the District Court with directions to sustain the Commission's orders." 385 U.S. at 75.

No useful purpose would be served by a remand by this Court to the District Court. This case is one where the District Court "misapprehended or grossly misapplied" the standards of judicial review. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 491. Thus, this Court has found unwarranted or unnecessary a remand to a lower Court for further decision in *Chicago & N.W. Ry. v. Atchison, T. & S.F.*

*Ry.*, 387 U.S. 326, 356 ("attacks on the legal validity of the Commission's findings . . . so insubstantial that no useful purpose would be served by further proceedings in the District Court"); *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 730 (remand with directions to enforce agency order); *cf. National Labor Relations Board v. Food Store Employees Union, Local 347*, ___ U.S. ___, 94 S. Ct. 2074, 2079 ("crystal clear" error by lower Court "renders a remand an unnecessary formality").

## IV.

## CONCLUSION

The Commission's decision contains substantial evidence supporting the agency's findings of fact and conclusions of law. Because of the serious misapprehension or gross misapplication of accepted principles of judicial review by the District Court, this case presents the appropriate instance where remand to the lower Court for a further and correct review of the administrative action would serve no useful purpose. The case therefore should be remanded to that Court



with directions to affirm the Commission decision.

Respectfully submitted,

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Nos. 73-1055 and 73-1069-73-1072

# In the Supreme Court of the United States

## OCTOBER TERM, 1973

BOWMAN TRANSPORTATION, INC., APPELLANT
*v.*
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

JOHNSON MOTOR LINES, INC., APPELLANT
*v.*
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

RED BALL MOTOR FREIGHT, INC., APPELLANT
*v.*
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

LORCH-WESTWAY CORP., ET AL., APPELLANTS
*v.*
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS
*v.*
ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS*

# BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 73-1055

BOWMAN TRANSPORTATION, INC., APPELLANT

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

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No. 73-1069

JOHNSON MOTOR LINES, INC., APPELLANT

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

No. 73-1070

RED BALL MOTOR FREIGHT, INC., APPELLANT

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

No. 73-1071

LORCH-WESTWAY CORP., ET AL., APPELLANTS

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

No. 73-1072

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS*

---

**BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION**

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## OPINIONS BELOW

The opinions of the district court (App., vol. II, 1275, and vol. I, 807) are reported at 364 F. Supp. 1239. The report of the Interstate Commerce Commission (App., vol. I, 101) is published at 114 M.C.C. 571. The final order of the Commission (App., vol. I, 363) is not reported.

## JURISDICTION

The judgment of the district court was entered on September 11, 1973 (App., vol. I, 739). Appellants, United States and Interstate Commerce Commission, filed a motion for amendment of judgment on September 17, 1973 (App., vol. I, 795). On October 4, 1973, the district court denied the motion (App., vol. I, 807). Five separate notices of appeal were timely filed (App., vol. I, 801-802, 803-806, 825-826, 827-830, 831-834). On November 13, 1973, Mr. Justice Blackmun extended the time for docketing the appeals to January 8, 1974 (App., vol. I, 845), and they were docketed on January 5 and January 8. On April 29, 1974, this Court noted probable jurisdiction and consolidated the five appeals. The jurisdiction of this Court rests on 28 U.S.C. 1253 and 2101(b).



## QUESTIONS PRESENTED

1. Whether the district court's reversal of the Interstate Commerce Commission's decision finding that certain additional motor carrier service is required by the public convenience and necessity was based upon improper standards of judicial review.
2. Whether the district court's refusal to remand the case to the Commission improperly precluded the Commission from further consideration of the substantive merits of the issues of public convenience and necessity.

## STATUTES INVOLVED

The pertinent statutory provisions, the National Transportation Policy, 54 Stat. 899, 49 U.S.C. preceding 1, Section 207 of the Interstate Commerce Act, 49 Stat. 551, as amended, 49 U.S.C. 307, and Section 706 of the Administrative Procedure Act, 80 Stat. 393, 5 U.S.C. 706, are set forth in the Joint Appendix at vol. I, pp. 93-100.

## STATEMENT

This is a direct appeal from a final judgment of a three-judge district court invalidating an order of the Interstate Commerce Commission. The order in question authorized issuance of certificates of public convenience and necessity to three applicants conferring authority to transport general commodities by motor vehicle over regular routes between specified points in the southeastern and southwestern United States. The Commission found that existing

service between the points involved was not reasonably adequate to meet the demonstrated needs of the shipping and receiving public, and that the public convenience and necessity required the grant of these certificates. The district court, although finding the Commission's decision to be supported by portions of the record, concluded that the Commission's findings and conclusions were arbitrary, capricious and without a rational basis. The court further found that the record was too stale to permit a determination of the issues, and refused to remand the case to the Commission for further proceedings.

## PROCEEDINGS BEFORE THE COMMISSION

Between December 1964 and July 1965, the Commission received twenty applications from motor common carriers seeking authority to conduct general commodity operations between points in the southwest and southeast. After a prehearing conference in 1966, the Commission ordered that ten of the applications be heard on a consolidated record.

During the one hundred and forty-nine days of hearings [1] more than nine hundred shippers and receivers of freight testified on behalf of the applicants (App., vol. II, 867). Sixty-six competing rail and motor carriers opposed these applications.[2] These protestants were supported by 62 witnesses (*id.* at 868).

[1] The hearings, which were scheduled at intermittent intervals, extended from March 1966 to August 1967.

[2] Each of the applicants was also a protestant to the other applications.



The two examiners who heard the evidence recommended that all ten applications be denied. In arriving at this recommendation the examiners established some forty-five separate categories of commodities and examined the evidence with respect to each commodity category. The recommendation was also based on the assumption that granting all ten applications would adversely affect existing carrier service. The examiners acknowledged that many complaints had been voiced by shippers concerning inconsistent and lengthy transit times, inadequate pick-up service, difficulties in tracing, and loss and damage claims (App., vol. II, 873), but found that the proposed services would not be "sufficiently superior to that of the existing carrier services to support a conclusion that the public convenience and necessity require the operation proposed" (*id.* at 874).

Upon the filing of exceptions to the examiners' report and responses, the matter was considered by the Commission, Division 1 (App., vol. I, 101-361). The Commission performed a thorough re-evaluation of the evidence, the recommendations of the hearing examiners, and the pleadings. It adopted the examiners' "summary of the evidence presented by the protestants as to their authorities, equipment, and operations" (*id.* at 105). It did not, however, adopt the examiners' grouping of the evidence on a commodity by commodity basis. The Commission determined that the evidence should be analyzed on a geographic basis in order to obtain "a clearer picture of the supporting witnesses' needs" (*id.* at 121). It

found that "[t]he evidence considered in its entirety is convincing that the additional services * * * will serve a useful public purpose, responsive to a public demand and need, and that available transportation services between the points and to the extent authority is granted herein are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public" (*id.* at 129).

In reaching this conclusion, the Commission recognized that the traffic studies presented by the supporting shippers were subject to certain infirmities and that "some of the witnesses either have not tried all of the available motor carrier service or did not route their relevant traffic" (*id.* at 130). However, because of the collective weight of the documentary evidence, and particularly the evidence relating to problems with excessive and inconsistent transit times (*id.* at 129-130), "restrictions or embargoes which limit the service available * * *; outright refusals by existing carriers to handle their traffic; pickup and delivery problems; interline difficulties relating to loss, damage, tracing, shortages, and misrouting; lost business and accounts; and customer complaints" (*id.* at 130), it was concluded that "[c]onsidered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service" and that they "have shown a valid public need for additional motor carrier service" (*ibid.*).

The Commission also considered the transit time studies submitted by fourteen of the protesting carriers, and stated that those studies demonstrated "that in certain instances during the study periods expeditious service was rendered by certain of the protestants" (*id.* at 145). However, the Commission concluded that the protestants' studies were entitled to less weight than the supporting shippers' studies because they failed to reflect a truly representative picture of existing conditions in the area prior "to the notice of the commencement of the hearings in these proceedings" (*ibid.*).[3]



But the Commission also determined that, even though additional service was needed, a grant of all ten applications "could lead to unhealthy, if not cutthroat, competition inimical to the public interest" (*id.* at 147). Evaluating the quantum of existing service available, the "substantial evidence of widespread public dissatisfaction with available transportation services" (*ibid.*) and the indication of a rapidly increasing demand in this area for "added motor carrier service of a direct, single-line nature" (*id.* at 148), the Commission concluded that the authorization of three new, and somewhat competitive and overlapping services, was warranted. It selected Red Ball, Bowman and Johnson as best suited to meet the demonstrated needs of the public (*ibid.*).

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[3] In reaching this conclusion, the Commission noted two deficiencies in the protestants' traffic studies: "(1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers" (*Ibid.*).

Petitions seeking reconsideration and reopening were denied by the Commission, Division 1, Acting as an Appellate Division, on September 1, 1972 (App., vol. I, 363-369). Petitions seeking a declaration by the Commission that the proceeding involved an issue of general transportation importance were denied by order of the entire Commission dated October 6, 1972 (App., vol. II, 1271).

## THE DECISIONS OF THE DISTRICT COURT

On October 4, 1972, the appellees instituted an action in the district court to set aside and enjoin the report and order of the Commission. On September 11, 1973, the three-judge court issued an opinion and judgment (App., vol. II, 1275-1325) setting aside the Commission's order and permanently enjoining the Commission from issuing the certificates (*id.* at 1320).

The district court noted that an order of the Commission will ordinarily be sustained if it "is based on appropriate findings which in turn are supported by substantial evidence" (*id.* at 1304). However, it declared that Section 706(2)(A) of the Administrative Procedure Act sets forth requirements "in addition to" the requirement that certain agency actions be supported by substantial evidence and accordingly "a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the court, where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion" (*id.* at 1307). The



court purported to base its conclusion that an agency decision which is supported by substantial evidence may nonetheless be set aside as "arbitrary and capricious" on this Court's decision in *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402.

The district court then declared that the Commission had acted in an "arbitrary and capricious" manner in evaluating the evidence. This conclusion was based primarily upon the Commission's statements with respect to the probative value of certain transit time studies which the protestants had introduced to demonstrate the adequacy of existing service. (See Conclusions 12-15, App., vol. II, 1310-1312.) The court declared that there is "no rational basis" for the Commission's refusal to give greater weight to those studies and that the Commission had acted unfairly in failing to give the protestants advance notice that it considered their sampling techniques to be deficient. The court also criticized the Commission for failing "to meet the requisites of clarity" in that "principal findings of the Examiners * * * were neither adopted nor rejected * * *" (*id.* at 1310); for alleged internal inconsistencies (*id.* at 1316); and for alleged deficiencies in "discussion of the total services available at the time of the hearing and at the time of the decision"( *id.* at 1315).

The court refused to remand the proceeding to the Commission. It concluded that remand would serve "no useful purpose" in that the applications had "been pending since 1965, and the facts developed in this record have little bearing on a determination

at this time of 'the present or future public convenience and necessity' " (*id.* at 1319).

On September 17, 1973, the United States and the Interstate Commerce Commission filed a motion for amendment of judgment to provide for a remand of the proceedings to the Commission for further action consistent with the court's opinion. In an opinion filed October 4, 1973, (App., vol. I, 809) the court denied that motion. It declared that the applicants should file new applications and present the Commission with current facts reflecting the current situation in order that the Commission might make a legally valid appraisal of the public interest in the light of such facts (App., vol. I, 816).

## SUMMARY OF ARGUMENT

Since the enactment of the Interstate Commerce Act, it has been recognized that the "Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted." *United States* v. *Detroit Navigation Co.*, 326 U.S. 236, 241. Its function "is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies." *Ibid.* The reviewing court's function is limited to determining whether the Commission's decision is free of legal error and supported by substantial evidence in the record as a whole. "The judicial function is exhausted when



there is found to be a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Co.* v. *United States*, 292 U.S. 282, 286-287.

By treating the test of 5 U.S.C. 706(2)(A) that the action of the agency not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" as an additional item to be engrafted onto the "substantial evidence" test governing judicial review of agency findings made on the record after hearing, the district court misinterpreted its scope of review. If the agency's findings are supported by substantial evidence, and are within the agency's statutory powers, they are not "arbitrary or capricious" or "without a rational basis" as those terms are used in the Administrative Procedure Act. It is only when a finding is without substantial basis in the evidence that it lacks rational foundation. Cf. *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229. In short, the standard of review applied by the district court is a contradiction in terms.

The district court, under the guise of the "arbitary or capricious" standard, erroneously undertook the Commission's function to weigh the evidence and fashion appropriate relief and to substitute its judgment for that of the Commission. In so doing, the court either ignored or misinterpreted the Commission's treatment of the evidence.

The Commission's findings are supported by abundant evidence. The Commission not only received voluminous evidence demonstrating a need for ad-

ditional motor carrier service between the southwest and the southeast, it also received substantial evidence with respect to the need for service with respect to each route which it authorized in this proceeding. In light of this evidence, and since there is no other reason for setting the Commission decision aside, the judgment of the district court should be reversed with directions to dismiss the complaint. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621.

However, further Commission proceedings should not have been precluded even if it was proper for the district court to set aside the Commission's decision. Reviewing courts are not authorized to make the ultimate determination that a certificate should or should not be granted. If a reviewing court finds that the Commission erred in making such a determination, the appropriate disposition is to remand to the Commission for further proceedings consistent with the court's opinion. The district court's refusal to remand in this case was improper.

The court's assertions that the record is too stale and too bulky to be useful are incorrect and do not justify its action. If the record required additional evidence to bring it up to date, the Commission should have been given an opportunity to reopen the existing proceeding for the receipt of additional evidence. Forcing the Commission to begin afresh with an entirely new proceeding is an unwarranted interference with the Commission's discretion in managing its own proceedings.



## I. THE DECISION BELOW IS BASED ON AN IMPROPER STANDARD FOR JUDICIAL REVIEW OF AGENCY FACT-FINDING

This case does not involve any question with respect to the Commission's statutory authority to issue certificates of convenience and necessity to motor carriers, the legal criteria which govern the issuance of such certificates, or the propriety of the procedures which the Commission followed in reaching its decision. The appellees' challenge to the Commission's action was based solely on a claim that the Commission had erred in finding that shippers need the additional services which Red Ball, Bowman and Johnson have been authorized to provide. A determination that existing service is inadequate is essentially factual and judicial review of such a determination is governed by the applicable statutory standard for judicial review of agency findings of fact made in adjudicatory proceedings.

The fundamental error in the district court's decision lies in its misunderstanding and concomitant misapplication of the "arbitrary or capricious" standard of Section 706(2)(A) of the Administrative Procedure Act. It concluded that Section 706(2)(A) permits a reviewing court to set aside an agency decision if the court disagrees with the agency's evaluation of the weight of the evidence. It set aside the Commission decision because it believed the evidence presented by appellees was entitled to greater weight than the Commission accorded to it.

The decision below thus violates the long-established principle that a court's function in reviewing

fact-findings in an adjudicatory agency proceeding is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings. *Universal Camera Corp.* v. *Labor Board*, 340 U.S. 474. The reviewing court is not entitled to substitute its judgment with respect to the weight of the evidence in the absence of a provision permitting *de novo* review of a particular administrative action.

The meaning and purpose of the substantial evidence rule is explained in *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, where this Court observed (*id.* at 619-620):

> We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229. "[I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *Labor Board* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300. This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Labor Board* v. *Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106; *Keele Hair & Scalp Specialists, Inc.* v. *FTC*, 275 F.2d 18, 21.
>
> Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute.



Although the court below referred to the limitations on judicial review described in *Consolo*, it substantially departed from them. It did not limit its analysis of the evidence to a determination of its sufficiency to support the Commission's findings. Indeed, it held that "a mere review of the sufficiency of the evidence will not suffice" where there is an "allegation" that agency action is arbitrary or capricious (App., vol. II, 1307). And it invalidated the Commission's order without finding that it was not supported by substantial evidence and without finding that the Commission had failed to make appropriate findings. On the contrary, the court acknowledged that the "[d]efendants' briefs contain extensive references to excerpts from the record cited to support the ultimate conclusions of the Division" (App., vol. II, 1309) and that the Commission's ultimate conclusions are supported by portions of the record (*ibid.*)

The district court's Conclusions 12-21 (*id.* at 1310-1316) reveal that the court invalidated the Commission order, notwithstanding the abundance of evidence supporting the Commission's findings, because the court disagreed with the Commission's evaluation of some of the contrary evidence. In particular, the court felt that certain transit time studies which appellees introduced to demonstrate the adequacy of existing service were entitled to considerable weight

while the Commission determined that shipper evidence of inadequate service was entitled to greater weight.

The district court attempted to justify its action by asserting that the substantial evidence rule is not the sole test of the validity of agency actions under Section 706. It noted that Section 706(2)(A) provides that a reviewing court shall "(2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; * * *." Then the court labelled the Commission's determinations with respect to the probative value of the appellees' adequacy of service evidence as "arbitrary and capricious" and concluded that this rendered the Commission's adequacy of service finding invalid (App., vol. II, 1311).

The end result of the district court's interpretation of the "arbitrary or capricious" concept is to permit a reviewing court to engage in the type of "weight of the evidence" determination which is forbidden by the substantial evidence standard. Such an interpretation of Section 706(2)(A) would defeat the "very deliberate" purposes of Section 706(2)(E) which are described in this Court's *Consolo* opinion.

In enacting Section 706 of the Administrative Procedure Act, Congress obviously did not intend to require reviewing courts to reweigh the evidence in subsection 2(A) and prohibit them from doing so in subsection 2(E). Section 706 should be interpreted in a manner which harmonizes its parts. This



is readily accomplished by holding that any finding which is supported by substantial evidence in the record as a whole is not "arbitrary" or "capricious" within the meaning of Section 706(2)(A)—an interpretation entirely in accord with logic, precedent, and the legislative history of Section 706.

This Court's opinion in *Citizens to Preserve Overton Park* v. *Volpe, supra*, does not support the proposition that a finding which is supported by substantial evidence may be set aside as arbitrary or capricious. Although the Court noted that agency action may be set aside in all cases if arbitrary or capricious and may be set aside in some cases if it was not supported by substantial evidence (401 U.S. at 413-414), the Court did not examine the relationship between these two standards. The *Overton Park* case involved agency action which was "not designed to produce a record that is to be the basis of agency action—the basic requirement for substantial-evidence review * * *" (*id.* at 415); thus the holding of *Overton Park* is simply not applicable to adjudicatory proceedings.

In any event, the description of the scope of review under an "arbitrary or capricious" standard contained in *Overton Park* is inconsistent with the district court's assumption in the present case that the "arbitrary or capricious" standard provides a more expansive scope of review. This Court said that although under the "arbitrary and capricious" standard, the "inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow

one" and cautioned that a court "is not empowered to substitute its judgment for that of the agency" (*id.* at 416).

The federal courts have long recognized that an "arbitrary or capricious" action within the meaning of the Administrative Procedure Act is action taken without a rational basis. In *National Labor Relations Board* v. *James H. Matthews & Co.*, 342 F.2d 129, 131 (C.A. 3), certiorari denied, 382 U.S. 832, the court of appeals observed:

> Administrative action may be regarded as arbitrary and capricious only where it is not supportable on any rational basis. This court, and others, have heretofore held that "something more than error is necessary to spell out arbitrary or capricious action." *N.L.R.B.* v. *J.W. Rex Company, supra*, 243 F.2d 358, and the cases therein cited; *N.L.R.B.* v. *Parkhurst Manufacturing Company, supra*, 317 F.2d 518. The fact that on the same evidence a reviewing court could have reached a decision contrary to that reached by the agency will not support a determination that the administrative action was arbitrary and capricious.[4]

If a finding is supported by substantial evidence, then the agency necessarily had a rational basis for

[4] Accord: *Eastern Central Motor Carriers Ass'n* v. *United States*, 239 F. Supp. 591, 594-595 (D. D.C.); *Dell Publishing Co.* v. *Summerfield*, 198 F. Supp. 843, 844 (D. D.C.), *affirmed*, 303 F.2d 766 (C.A.D.C.); *East Tex. Motor Freight Lines* v. *United States*, 96 F. Supp. 424, 427-428 (N.D. Tex.).



adopting that finding. Therefore, the "arbitrary or capricious" standard is not properly viewed as an "additional" test of the validity of agency findings in adjudicatory proceedings; rather, as applied to fact-finding, it is synonymous with the "substantial evidence" test.

The legislative history indicates that Congress viewed the "substantial evidence" test as the means of applying the "arbitrary or capricious" standard to agency findings of fact. The final "Report of the Committee on Administrative Procedure" [5] served as the focal point for the enactment of the Administrative Procedure Act. In reviewing existing law, that Report observed that "judicial review may be expected to check extremes of arbitrariness or incompetence in administrative adjudications. This the courts have generally done, as is discussed below, by requiring the adjudications to be supported by substantial evidence" (*id.* at 78-79). And, the Report continued, "* * * the question whether the administrative finding of facts rests on substantial evidence, it is said, is really a question of law, for a finding not so supported is arbitrary, capricious and obviously unwarranted" (*id.* at 88).

Three members of the Committee urged Congress to adopt a uniform provision with respect to the

[5] Report of the Committee on Administrative Procedure, Appointed by the Attorney General, at the Request of the President, to Investigate the Need for Procedural Reform in Various Administrative Tribunals and to Suggest Improvements Therein, ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. Doc. No. 8, 77th Cong., 1st Sess. (1941).

scope of review in adjudicatory proceedings. They proposed that reviewing courts consider and decide "all relevant questions of: (1) constitutional right, power, privilege, or immunity; (2) the statutory authority or jurisdiction of the agency; (3) the lawfulness and adequacy of procedure; (4) findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence; and (5) administrative action otherwise arbitrary or capricious."[6] The use of the words "action otherwise arbitrary or capricious" indicates that they considered the adoption of unsupported findings to be one form of arbitrary or capricious action.

When the Administrative Procedure Act was enacted, Congress provided a similar enumeration of the subjects of review in Section 10(e), 60 Stat. 243.[7] Section 10(e) was not limited to review of adjudicatory proceedings. It purported to describe the scope of review with respect to all types of reviewable agency action. The Senate Judiciary Committee explained that it "is not possible to specify all instances in which judicial review may operate. Subsection (e), therefore, seeks merely to restate the several categories of questions of law subject to judicial review." Senate Judiciary Committee print of June 1945 on S. 7, p. 39, reproduced in "ADMINISTRATIVE PROCEDURE ACT, LEGISLATIVE HISTORY," S. Doc. No. 248, 79th Cong., 2d Sess. 11 (1946).

[6] S. Doc. No. 8, 77th Cong., 1st Sess. 246.

[7] Section 10(e) was substantially identical to the present Section 706.



The structure of Section 10(e) (now Section 706) indicates that Congress intended the "substantial evidence" test to be specifically applicable to adjudicatory findings and the "arbitrary or capricious" standard to be generally applicable to other matters requiring review.[8] Each of the categories of review contained in the Administrative Procedure Act embodies a specific application of the generic standard contained in Section 706(2)(A) ("arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). The "arbitrary or capricious" standard, therefore, is not an additional test—more stringent than the "substantial evidence" test—to be applied to adjudicatory findings. Since the decision below is based on the erroneous premise that this is the case, the district court's judgment should be reversed.

[8] This does not mean that the general "arbitrary or capricious" standard is not applicable to the non-fact finding aspects of adjudicative proceedings. For example, if the ultimate conclusion were totally unrelated to the findings, then the decision of the agency would be "arbitrary and capricious" even though each finding might be supported by substantial evidence. Agencies also make procedural decisions during the course of an adjudicative proceeding which might be challenged as an "abuse of discretion." It has long been recognized that the standard of review governing an agency's administration of its own procedural rules, *American Farm Lines* v. *Black Ball*, 397 U.S. 532, 538-539, or its decision to reopen a proceeding or grant a rehearing, *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514-519, is whether the agency's action was arbitrary or capricious or otherwise an abuse of discretion, even though the decision was made within the context of an adjudicatory proceeding.

## II. THE DISTRICT COURT SHOULD BE DIRECTED TO DISMISS THE COMPLAINT AND SUSTAIN THE COMMISSION'S DECISION

Although this Court frequently remands cases for reconsideration under proper standards if it finds that a lower court has applied an improper standard of review, this is not an inflexible rule. The Court has often determined that an agency decision should be sustained without further appellate proceedings. *E.g., Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621; see also *Illinois C.R. Co.* v. *Norfolk & W.R. Co.*, 385 U.S. 57, 75. The latter procedure is appropriate in this case. The district court did not and could not conclude that the Commission's findings are not supported by substantial evidence and no other valid reason for setting aside the Commission's order has been presented.

A further delay in the resolution of this 9-year-old controversy would not only be unnecessary and wasteful, it would also have serious adverse consequences for the public interest. The Commission granted these certificates in order to satisfy the burgeoning transportation needs of the mutually dependent economies of the southeast and the southwest. These needs will remain unsatisfied until judicial review of this Commission decision is finally completed.

### A. The Commission Findings Are Supported By Substantial Evidence

No court could reasonably conclude that the Commission findings in this case are not supported by substantial evidence. The Commission decision was



based on "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier application[s]" (App., vol. I, 103). The Commission noted (App., vol. I, 126-127) that "[a]pproximately 650 shippers have complained about inconsistent and excessive transit times, and over 200 introduced transit time studies demonstrating the undependable service they currently receive," [9] and that "[a]bout 70 of the shippers located at points in a total of 16 States complain collective about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic," while "[p]ickup and delivery complaints were voiced by about 150 shippers located throughout 18 States." [10] Furthermore, the Commission relied upon evidence presented by approximately 110 shippers who complained about interline difficulties and about 200 shippers who "collectively com-

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[9] For an extensive index to the record made before the Commission of the complaints concerning: (1) excessive and erratic transit times; (2) service restrictions, embargoes, and refusals to handle traffic; (3) pick-up and delivery; (4) interline difficulties and loss, damage and misrouting; and (5) adverse effect upon shippers, see Appendix IV to the Joint Brief of the United States and Interstate Commerce Commission filed in the district court.

[10] In particular, the Commission noted that a number of the protestants "refuse to interline, refuse shipments of less than a specified weight, refuse to serve directly authorized points beyond major gateways, refuse to maintain through routes, joint rates, or interchange arrangements for furniture and other specified commodities, and refuse to protect through routes or joint rates on interline movements of shipments involving more than two carriers" (App., vol. I, 127).

plain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service" (App., vol. I, 127). Finally, the Commission observed that "[t]he above-described difficulties have resulted in shippers losing customers, business, and short-term discounts" (App., vol. I, 128, n. 36). This evidence clearly supports the determination that existing service is inadequate to meet the needs of the shipping public.

The Commission not only found that the evidence as a whole demonstrates a need for additional service between these two important regions, it also performed a comprehensive evaluation of the evidence presented by Red Ball, Johnson and Bowman with respect to the need for the particular services each proposed to provide (App., vol. I, 132-158).

For example, in considering Bowman's application to serve ten specified points in Mississippi the Commission noted that more than 100 witnesses who ship commodities to or from those points had experienced difficulties with inadequate, inconsistent, and excessive transit times and that transit-time studies submitted showed "that between 3 and 4 day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points" (App., vol. I, 151). The Commission also considered the complaints of 25 witnesses concerning "refusals by authorized carriers to handle their traffic, and of carrier embargoes or restrictions" (*ibid.*), including complaints directed against three of the appellees—Dixie, Campbell, and Roadway. Other shippers complained of "loss, damage, difficulties with interline service, lost business and accounts, and customer complaints" (*ibid.*). Finally, the Commission cited testimony that "witnesses located at such points in Mississippi as Jackson and Greenville have discontinued shipping from Atlanta because of the problems they have experienced" (*ibid.*).



The Commission also found that the carriers protesting the Mississippi portion of Bowman's application do not provide the service which Bowman proposes to provide. The Commission noted that "Dixie serves only 4 of the 10 Mississippi points here sought to be served by Bowman and maintains terminals at only 2 of these points" (*ibid.*), while Gordons (another appellee) does not actively solicit any traffic between Atlanta and Birmingham and seven of ten Mississippi points Bowman seeks to serve (*ibid.*). Other shippers complained of Ryder's failure to render "adequate service to Mississippi, and that it has refused to handle certain traffic to points in this State" (*ibid.*). The Commission further indicated (*ibid.*) that while Roadway, Braswell, and GFA had been authorized to serve points in Mississippi since the hearings in the instant proceedings, those carriers' services were still more limited than the proposed Bowman service."[11]

[11] For example, Roadway's "coverage of its operating rights in southern Alabama and Georgia is limited and it does not hold authority to render regular-route service at points in Florida" (App., vol. I, 152), while "Braswell's single-line operations to or from Vicksburg, Jackson and Meridian extend only as far east as Atlanta, and its authority in Alabama is

The Commission found comparable evidence with respect to each of the authorized routes. More than 60 witnesses who supported the Kansas-Missouri portion of the Bowman application complained about inconsistent and excessive transit times (App., vol. I, 152). The evidence demonstrated that two of the appellees (Roadway and Transcon) decline to handle some of the shippers' traffic (*ibid.*) while other carriers holding authority to serve a broad territory in the south "collectively serve only" a few major cities (*ibid.*).

Approximately 100 witnesses expressed a need for Bowman's proposed services between points in Arkansas and the southeastern and eastern seaboard territory presently served by Bowman (App., vol. I, 153). Similar testimony was presented concerning the inadequacies of service between New Orleans and specified points in Alabama and Tennessee, and between Dallas-Fort Worth, Texas, and the points Bowman currently serves (App., vol. I, 154).

In approving Johnson's "overhead" single-line service between a number of major points in Texas, Louisiana, and Mississippi and points it serves along the eastern seaboard and in the Gulf territory, the Commission observed that its application was supported by 236 witnesses whose "testimony establishes that the existing service on small shipments traffic between the involved territories is generally inade-

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limited to only the major points of Birmingham and Montgomery" (*ibid.*).



quate" (App., vol. I, 155).[12] The Commission also noted the existence of many complaints concerning lengthy and undependable transit times, poor pick up and delivery service, tracing problems and excessive loss and damage which the Commission recognized

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[12] The Commission has informed Congress:

> One of the most serious problems confronting the Commission is the maintaining of adequate service to shippers and receivers of small quantities of freight, particularly where such freight is not profitable to handle or moves to or from outlying locations. With most of the railroads not rendering any or very little less-than-carload service, the burden of supplying this service has fallen principally upon the motor common carriers, either alone or in conjunction with freight forwarders which are traditionally transporters of small shipments. A staff study by the Commission's Bureau of Economics, issued in 1967, shows that while a few motor carriers have responded to the small shipment challenge with new emphasis upon specialized equipment and service features, many carriers have reacted to this burden by instigating service curtailments or complete abandonment. Embargoes, rate increases, packaging and tariff restrictions, and other devices are employed by the motor carriers as an answer to their individual small shipment problems. However, the most serious threat to the maintenance of adequate small shipment service has been the increasing tendency of interline carriers to cancel their through route and joint rate agreements with other motor carriers and their refusal to participate in new agreements. The result has been that the number of informal shipper complaints concerning the deterioration of such service has been increasing sharply in the past year or two.
>
> Hearings before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, on Review of the Interstate Commerce Commission Policies and Practices, 91st Cong., 1st Sess., p. 290.

could "be attributed to the existing joint-line motor service" (*ibid.*).

In considering the applications of four southwestern carriers for authority to extend their routes to southeastern points, the Commission found (App., vol. I, 148) "that the evidence of record, including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them."[13] The Commission then focused on the problem of which application should be granted. In concluding that Red Ball's proposal was the most feasible, it noted (*ibid.*) that "Red Ball operates over a much more extensive system of routes" than the competing applicants, and that because of its extensive terminals and equipment located at those terminals, Red Ball "is in a much better position to serve shippers and receivers located in the Southwest" than the others. The Commission also noted that Red Ball presented

[13]In considering Red Ball's application, the Commission specifically considered, as reflected by its discussion in Appendix D to its report (App., vol. I, 179), the grants of other authority and their effect as follows:

"* * * Since the close of the hearing, Braswell, Herrin, Mercury, and T.I.M.E. have been authorized to render single-line service between Atlanta and Dallas, Tex.; Braswell, Herrin, and Mercury have been authorized to serve between Atlanta and Houston, Tex.; Mercury, Braswell, Herrin, Campbell, and Roadway-West have been authorized to serve between Atlanta and Baton Rouge, La.; Braswell, Campbell, and Roadway-West have been authorized to serve between Atlanta and Jackson, Miss.; and Braswell, Campbell, Herrin, and Roadway-West have been authorized to serve between Atlanta and New Orleans, La."



130 supporting witnesses and that an additional 23 witnesses specifically supported its application. These factors, combined, qualified Red Ball "to receive the authority for which a public need has been found in this report" (App., vol. I, 149).

The district court did not question the quantity or quality of the voluminous evidence demonstrating that shippers do need the additional services which have been authorized by these certificates.[14] It focused almost entirely upon the appellees' evidence and asserted that the Commission's failure to give that evidence greater weight is "arbitrary." Such assertions do not imply that the evidence of need is not substantial.

Although the district court referred to the abundant evidence supporting the Commission's decision, it made no attempt to apply the substantial evidence test. Instead, by attributing significance to its finding that the Commission's decision was supported by "portions" but not the entire record, the court erected an impossible barrier to the sustaining of administrative findings. Every adversary proceeding involves contradictory evidence, and findings of fact always require rejection of some evidence. The fact that the court may have disagreed with the Commission's weighing of the evidence does not justify its refusal to sustain the Commission's order.

[14] It did suggest that the record evidence might not reflect the need for service at the time of the decision (App., vol. II, 1314-1316). That suggestion is unfounded. See pp. 34-35, *infra*.

### B. The Commission's Decision Is Not Deficient In Any Other Respect

The district court emphasized several aspects of the Commission's decision which the court found to be "arbitrary". Analysis of these factors in light of the record in this case demonstrates that the court's conclusions represent nothing more than its own reweighing of the evidence and substitution of its judgment for that of the Commission. Moreover, in substituting its judgment for that of the Commission, the court overlooked or misinterpreted the relevant evidence.

#### 1. *The Transit Time Studies*

The district court's conclusion that the Commission acted "arbitrarily" in its treatment of appellees' transit time studies is perhaps the clearest illustration of the court's erroneous approach to review. Contrary to the court's assertion (App., vol. II, 1310-1312), the Commission did not "reject" the studies or refuse to consider them. It merely determined that they should be accorded less weight than other evidence submitted by the shippers. That determination is reasonable and proper. The Commission explained (App., vol. I, 129):

> Generally, the [protestants'] exhibits cover periods subsequent to the notice of the commencement of the hearings in these proceedings. As a consequence, while they demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants, these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration.



The district court's statements (App., vol. II, 1312) that these "deficiencies" had not been suggested prior to the Commission's ruling, that protestants had not been given an opportunity to defend their evidence or correct such deficiencies, and that the Commission employed a new standard, are incorrect. In its earlier report in *Braswell Freight Lines, Inc., Extension—Atlanta*, 100 M.C.C. 482, 493-494—a proceeding which involved most of the protestants herein—the Commission announced that transit studies such as those submitted in the instant case were not persuasive in that they do not reflect a true picture of the overall pattern of transit-time service existing in the affected areas. Furthermore, protestants were given an opportunity in their petitions for further reconsideration to defend their evidence.

Similarly, the Commission did not apply a different standard in evaluating studies submitted on behalf of the applicants.[15] It recognized (App., vol. I, 126)

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[15] The court (App., vol. II, 1296-1297) erroneously asserts that the Commission overlooked Exhibits 1747-1763, presented

that these studies were also subject to deficiencies but concluded that "[t]hese infirmities, however, do not substantially affect the weight which should be accorded to the documentary evidence collectively presented by the supporting witnesses. Considered as a whole, the record demonstrates that many of the supporting witnesses are not receiving reasonably adequate service" (App., vol. I, 130).

In short, the Commission chose to accord greater weight to the testimony and documentary evidence submitted by the witnesses who supported the application than to appellees' transit time studies. The Commission's decision was not arbitrary; indeed, its evaluation of the relative probative value of the evidence was a proper exercise of its administrative function and, had the district court applied the correct standard of review, the Commission's action would have been sustained.

### 2. *The Adverse Impact of the Grants of Authority*

The balancing of adverse impact and the public need for additional service is precisely the kind of judgment which is entrusted to the Commission's expertise. The Commission has primary responsibility for implementation of the National Transportation Policy and, in discharging its responsibilities, the

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by one protestant covering periods prior to the notice of commencement of hearings. The Commission in fact considered such exhibits in stating (App., vol. I, 339) that the data reflecting operations during certain test periods submitted by Campbell reflected time performances ranging from 71.6 to 82.4 percent.



Commission must weigh the assertions of injury from new competition against the benefits from such competition.

Contrary to the district court's assertions (App., vol. I, 784-785), the determination that appellees will not be adversely affected by the grant of these certificates is not inconsistent with the facts found by the examiners and the Commission. Although the Commission did find that a loss of any of Roadway's eastbound traffic from Texas origins would result in a further imbalance in its operations (App., vol. I, 345) and that diversion of freight from Campbell's terminal points would result in deterioration of Campbell's service at smaller points in Mississippi (App., vol. I, 339), this does not detract from a determination that appellees did not make a sufficient showing of adverse effect to warrant rejection of all applications for authority. The Commission found that only one carrier, Holloway, had shown that its operations may be seriously affected and concluded that "• • • the gains to be derived by the shipping public in general far outweigh any adverse effect this carrier or any other protestant may experience" (*id.* at 157). The Commission was acting within its discretion in reaching that conclusion. *United States* v. *Dixie Highway Express, Inc.*, 389 U.S. 409, 411-412; *United States* v. *Drum*, 368 U.S. 370, 374.

### 3. *Clarity of the Commission Decision*

The court's statement that the Commission decision lacks clarity because the principal findings of

the examiners were neither adopted nor rejected is unwarranted. The Commission did adopt "the examiners' summary of the evidence presented by the protestants as to their authorities, equipment and operations" (App., vol. I, 105). It did not, however, agree with the examiners' treatment of the evidence and regrouped the evidence to give a clearer picture of the needs of the relevant communities (App., vol. I, 121). The Commission decision represents a complete analysis of the evidence presented, and the rationale for its conclusions and the evidence relied upon are clearly set forth therein.

#### 4. *Changes in Service During the Proceeding*

The district court also erroneously evaluated (App., vol. II, 1314-1316) the Commission's consideration of service instituted during the course of the proceeding in determining the competitive effect upon existing carriers. Focusing only on the "quantity of service available" (*id.* at 1314), the court ignored the Commission's repeated references to, and consideration of, changes in motor carrier operations in the area.[16] The Commission's treatment of these changes is manifested by its statement (App., vol. I, 106, footnote omitted):

> As indicated in appendix D, certain protestants request that official notice be taken of specified motor carrier changes, in the involved area, that have been approved and authorized by this

[16] See App., vol. I, 104, 105, 108, 115, 116, 130, 157, 173, 177, 181, 321, 324, 326, 333, 335, 339, 341, 344, 346, 354.



> Commission since the close of these hearings in August 1967. We may take official notice of our action in other proceedings which bear materially upon the issues under immediate consideration. *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489 (1969); and *Ayers Extension—Cheyenne, Wyo.*, 99 M.C.C. 795, 797 (1965). Accordingly, the actions affecting protestants have been noted in appendix G and those actions affecting carriers not parties to this proceeding, although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determinations.

Thus, there is no substance to the suggestion that the Commission could not determine the need for service at the time of its decision.[17] The Commission did examine information which led to a change in circumstances and arrived at an informed assessment of the current need for service and the probable future needs of the affected areas.

Since the district court did not find the evidence supporting the Commission findings to be less than substantial and did not find any other significant error in the Commission proceedings, dismissal of the complaints should now be ordered.

[17] This erroneous assertion by the district court was a critical factor in its conclusion that the record was stale. See pp. 39-40, *infra*.

## III. THE DISTRICT COURT ERRED IN PRECLUDING FURTHER COMMISSION CONSIDERATION OF THE SUBSTANTIVE MERITS OF THE PUBLIC CONVENIENCE AND NECESSITY ISSUES

Even if it is assumed *arguendo* that the district court could properly set aside the Commission's decision because it believed evidence presented by appellees was entitled to greater weight, the case should have been remanded for further Commission proceedings. It is well settled that "an administrative determination in which is embedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145. The reviewing court's function "ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration." *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20. See *National Labor Relations Board* v. *Food Store Employees Union, Local 347*, No. 73-370, decided May 20, 1974.

This precept is fitting here. Congress has delegated responsibility to the Commission to determine whether the "[p]ublic convenience and necessity" will be served by granting a certificate to a carrier. This delegation affords "administrative discretion to the Commission * * * to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65. The reviewing court does



not have the power to make the ultimate determination that a certificate should or should not be granted. Its role is limited to determining whether the Commission has considered appropriate factors. Therefore, the district court's refusal to remand this case was improper.[18]

The cases cited by the district court do not support its refusal to remand. It relied on a statement in *American Trucking Associations, Inc.* v. *United States*, 364 U.S. 1, 17, that "under the particular circumstances of this case, we believe that it should be remanded to the Commission" in concluding that a remand is not always required. However, the court missed the thrust of this Court's reasoning in *American Trucking*. The Court there held that the Commission exceeded its statutory authority by granting contract carrier permits to a motor carrier subsidiary of a railroad without imposing "railhaul" restrictions or finding "special circumstances" justifying the waiver of such restrictions. The appellants claimed the Commission had already found that there "were no special circumstances aside from the alleged im-

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[18] Of course, if an agency exceeded its jurisdiction in initiating a proceeding or lacks continuing power to deal with the subject matter of the proceeding, then a remand would be inappropriate. *Williams* v. *Washington Metropolitan Area Transit Com'n.*, 415 F.2d 922 (C.A.D.C.), is an example of the latter situation. The court determined that a remand would be futile because the orders under review had been superseded by later fare orders and the Commission did not have authority to fix rates for the past. See, also, *Washington Gas Light Co.* v. *Baker*, 195 F.2d 29 (C.A.D.C.). Those decisions are not applicable, however, to a situation such as that here, in which the agency has the jurisdiction and the ability to correct the defect found by the reviewing court.

possibility of imposing the usual restrictions upon a contract carrier." *Id.* at 16. If this were the case a remand would serve no purpose because the Commission would be unable to grant the permits. This Court said that it was not certain the Commission had made such a finding and that it would be "warranted in precluding further proceedings only if, by an independent search of the record, we were able to conclude that, as a matter of law, there are no factors present which the Commission could have regarded as special circumstances." *Ibid.* The Court accordingly determined that the case "should be remanded to the Commission so that it can apply what we hold to be the applicable principles in such further proceedings as it may find to be consistent with this opinion." *Id.* at 17.

The district court here could not and did not find that as a matter of law there are no factors which could justify the grant of the certificates. The Commission's alleged "error" in evaluating the evidence can be cured by reweighing the evidence along with additional evidence received upon reopening. This Court's reasoning in *American Trucking* shows that this would be the proper procedure.[19]

[19] The district court's reliance on *Interstate Commerce Commission* v. *Atlantic Coast Line R. Co.*, 383 U.S. 576, and *Zuber* v. *Allen*, 396 U.S. 168, is also misplaced. Neither *Atlantic Coast Line* nor *Zuber* involved review of agency findings in adjudicatory proceedings. Moreover, to the extent these decisions comment on the necessity of remand after review of agency action, they support our position. Thus, in *Atlantic Coast Line* this Court said: "When the primary jurisdiction doctrine requires initial decision by the Commission, it also precludes the court from redetermining the question itself should the Commission decision be defective. The proper course is to remand to the Commission * * *." 383 U.S. at 601. In *Zuber* this Court declined to remand a controversy concerning milk marketing orders to the Secretary of Agriculture because, among other reasons, the government did not request a remand; here, the Commission did request that the present case be remanded.



The district court attempted to justify its action by declaring in its opinion denying a motion to amend the judgment (App., vol. I, 809-823) that it was not precluding the Commission from granting certificates, but was only precluding the Commission from utilizing the present record because it is too bulky and too stale to be useful.

Recognizing that lapses of time between the conclusion of hearings and the issuance of a final agency order are inevitably involved in administrative proceedings, this Court has sustained agency determinations based on records no more current than the one involved in this case. See *Northern Lines Merger Cases*, 396 U.S. 491, 520-522; *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503; *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515. As this Court observed in *Jersey City*, *supra*, 322 U.S. at 514:

> Administrative consideration of evidence—particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it—always creates a gap between the time the record is closed and the time the administrative decision is promulgated. * * *

Reopening of the record is within the discretion of the agency (see, *e.g.*, *Northern Lines Merger Cases*, *supra*, 396 U.S. at 520), and the Commission did not abuse its discretion in declining to reopen the proceedings in this case. As noted earlier, the Commission took notice of developments which occurred between the closing of the record and the issuance of its order. If, however, the district court's conclusion that new developments require further consideration is accepted, the course set forth in this Court's opinion in *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 172, should have been followed. After noting several unquestioned recent events, including the amendment of a relevant statute between the date of the Commission's order and the court's opinion, this Court there stated:

> * * * These intervening facts so changed the complexion of the case that (even putting aside the consideration discussed above) the reviewing equity court, in the exercise of its sound discretion, should not have affirmed the order, as it did, but should have vacated it and remanded it to the Commission for further consideration in the light of the changed conditions. See *Ford Motor Co.* v. *Labor Board*, 305 U.S. 364, 374; *Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U.S. 126, 130-131; *Gulf, C. & S.F.R. Co.* v. *Dennis*, 224 U.S. 503, 506-509.

The district court's prohibiting of the introduction of all or portions of the present record in a subsequent proceeding here was thus an unwarranted interference with the Commission's discretion in managing its own proceedings. Moreover, it reflects a misconception of the nature and significance of the evidence which casts further doubt upon the validity of the court's conclusions.



The court's statement that the record is too bulky indicates an assumption by the court that evidence introduced by other carrier applicants is irrelevant. That assumption is incorrect. Multiple application proceedings tend to overlap and to produce evidence establishing deficiencies in a broad area. All the evidence should be considered in such proceedings. The Commission's function is not to oversee a contest between competing motor carriers but to determine whether the "public needs the extra hauling capacity in the areas covered by the certificate." *Carolina Freight Carriers Corp.* v. *United States*, 297 F.Supp. 848, 852 (W.D.N.C.). In so doing, it must be free to review and rely upon all evidence of shipper dissatisfaction regardless of the carrier actually supported. To do otherwise would be to refuse to consider all relevant evidence of need. Although changes have undoubtedly occurred since this record was assembled, this does not make the voluminous evidence with respect to shipper needs and the capabilities of various carriers irrelevant. The Commission should be permitted to update the record in an appropriate manner (if necessary) and should not be required to conduct an entirely new proceeding.

Thus, even if it had been proper to set aside the Commission's decision, the case should have been remanded to the agency for a determination of the ap-

propriate course of action in light of the court's opinion. If additional evidence is required to bring the record up to date, the Commission should have the discretion to reopen the existing proceeding for the receipt of additional evidence. A "judgment which instructs the Commission to grant relief to the appellee and precludes the Commission from reopening the proceedings for the receipt of additional evidence * * * is an improper limitation on the Commission's duty to reconsider the entire case." *United States* v. *Saskatchewan Minerals*, 385 U.S. 94-95.

## CONCLUSION

The judgment should be reversed, and the case remanded with directions to sustain the Commission's order under review.

Respectfully submitted.

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

**Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072**

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

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# In the Supreme Court of the United States

OCTOBER TERM, 1973

**Nos. 73-1055, 73-1069, 73-1070, 73-1071, 73-1072**

BOWMAN TRANSPORTATION, INC.; JOHNSON MOTOR LINES, INC.; RED BALL MOTOR FREIGHT, INC.; LORCH-WESTWAY CORPORATION, et al.; UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., et al.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

## BRIEF FOR APPELLEES

## INTRODUCTION

This brief is submitted jointly on behalf of all appellees.[1] No issue is taken with the portions of appellants' briefs entitled "Opinions Below", "Jurisdiction" and "Statutes Involved".

1. Arkansas-Best Freight System, Inc.; Mercury Motors, Incorporated; Alamo Express, Inc.; Braswell Motor Freight Line, Inc.; Campbell Sixty-Six Express, Inc.; Central Freight Lines, Inc.; ET&WNC Transportation Company; Eagle Motor Lines, Inc.; Gordons Transports, Inc.; Holloway Motor Express, Inc.; Mercury Freight Lines, Inc.; Red Arrow Freight Lines, Inc.; Red Line Transfer & Storage Company, Inc.; T.I.M.E.-DC, Inc.; Transcon Lines; Yellow Freight System, Inc.; Roadway Express, Inc.; and Jack Cole-Dixie Highway Company.

## QUESTIONS PRESENTED

The questions presented by the United States and the Interstate Commerce Commission reasonably set forth, as far as they go, the issues before this Court. However, the "Questions Presented" submitted by appellees more precisely define the issues:[2]

> "Upon finding orders of the Interstate Commerce Commission, entered after a formal hearing, to be based upon findings and conclusions that were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, did the District Court, expressly following a provision of the Administrative Procedure Act, 5 U.S.C. § 706, err by holding such orders to be unlawful?
>
> Was it mandatory that the District Court remand this case to the Commission for further proceedings on the present record; or, if not mandatory, did the court properly decline to remand under the peculiar circumstances and development of the agency record?"

## STATEMENT

The order in question involves a decision of the Interstate Commerce Commission disposing of applications by the three motor carrier appellants (Johnson Motor Lines, Inc., Red Ball Motor Freight, Inc. and Bowman Transportation, Inc.; "Johnson", "Red Ball" and "Bowman") that were before the Commission for more than seven years. During that period a massive expansion of carrier operations

2. Appellees' Motion To Dismiss and Affirm, at 2.



took place with Commission approval.[3] Initially, there were 21 applications that sought major expansions of operating authority within southeastern and southwestern portions of the United States. Ten, including the three here involved, were selected for hearing on a consolidated record before two of the Commission's most experienced hearing examiners[4] (App. 1282).

A joint brief has been filed for appellants, United States of America and Interstate Commerce Commission. They will be referred to herein as "the Government". A separate brief has been filed jointly on behalf of appellants, Bowman, Johnson, and Red Ball, applicants before the Commission, and a group of shippers that testified in support of the Johnson application.[5] They will be referred to collectively as "the private appellants".

Appellees are 18 motor carriers that participated in the Commission proceeding as protestants and in the court below as plaintiffs. They will be referred to collectively as "appellees".

The Government's brief outlines the dates involved and the massive size of the record resulting from the con-

3. *E.g.*, at the time of the hearing, three carriers provided direct service between Atlanta and Dallas, focal points of the proceeding. At the time of the Commission's decision, there were 13 such carriers. Similar expansions occurred without exception at every city involved (App. 1298-1299). The court below was furnished with a detailed analysis from the record demonstrating the specific increases that occurred at 14 of the principal cities involved. Plaintiffs' Initial Brief (District Court), at 142-145.

4. Now termed "administrative law judges". For consistency, the title "examiners", used in the record, will be utilized here.

5. These shippers did not take the same position, as intervenors before the Commission, that they had taken as witnesses at the hearing. For example, all but 12 had testified in support of one or more of the other applications, in addition to Johnson's, but the arguments that they advanced before the Commission (including those deemed improper by the reviewing court) were submitted only in behalf of Johnson (App. 946-979).

solidation of the ten applications. The examiners accurately summarized the voluminous evidence,[6] finding that there was no public need for the services proposed and that approval of *any one* of the applications would result in a serious deterioration of existing service, contrary to the public interest and the National Transportation Policy (App. 889-892). The examiners' conclusions were predicated, in part, upon the fact that *none of the carrier appellants proposed to supply service to any point or operate over any route that was not already adequately served by multiple carriers.* Instead, each proposed only to render a highly selective form of "overhead" operation, restricting their service to selected major cities. The examiners found that the carriers adequately serving the areas were dependent on volume traffic at the larger cities (that would be served by carrier appellants) in order for them to maintain service to the smaller communities (that would not be served by carrier appellants). They recognized that if any of the applicants were permitted to superimpose its proposed service on that presently provided, it would result in a deterioration of service at major cities and smaller communities along the routes, and would result in forcing existing carriers to increase the amount of their empty vehicle operations within the area[7] (App. 1290, 1300).

Most of the unsuccessful applicants filed exceptions, challenging the examiners' conclusions *but not their specific findings of fact* (App. 1292). At this stage of the proceedings, additional counsel entered the picture and new parties

6. No party has ever challenged the accuracy of the examiners' summary of the evidence as set forth in their 300-page report (App. 1285, 1292).

7. In view of the fuel crisis, the Commission recently reemphasized its long-standing policy of "minimizing or eliminating" empty vehicle movements. 38 Fed. Reg., No. 228, at 32856-7; No. 231, at 33355-6 (1973).



were permitted to intervene, resulting in the injection of political issues and arguments (App. 1302, 1318).

The final administrative determination of the proceedings resulted in the reversal of the examiners' conclusions (but not their findings) as to three carriers (appellants herein) and the sustaining of their denial of the remaining seven applications. This was by a two-to-one vote of a division composed of three of the eleven commissioners.[8] The 11-member Commission declined to review this decision, holding that "no issue of general transportation importance is involved" (App. 1281).

In discussing the decision of the Division, the private appellants make several comments in their "Statement" section which are contrary to the actual recitations in that decision. For example, at page 8 of their brief, they state that "the Commission rejected the examiners' findings and adopted only their 'summary of the evidence presented by the protestants [appellees] as to their authorities, equipment and operations.'" This statement is erroneous. If the Division had, in fact, "rejected the examiners' findings" as suggested by private appellants (for the first time), this would have left the Division's report devoid of findings to support essential conclusions. The Division's conclusion, for example, that applicants are "financially and

8. A dissenting opinion (App. 1323), favoring the denial of all applications, appears as a part of a subsequent decision by the same division after reopening the proceeding for the purpose of approving the application of one more applicant, Jones Truck Lines, Inc. See *Jones Truck Lines, Inc., Extension—Atlanta, Georgia*, 117 M.C.C. 586, 597 (1972). Appellees, as plaintiffs below, sought to supplement their complaint so as to seek review of *Jones* as a part of the present case; however, the Court overruled these efforts (App. 1278, 1320-1325), and a separate suit challenging *Jones* is now pending before the District Court for the Western District of Missouri, Springfield Division. At the Government's request, *Jones* is being held in abeyance awaiting decision herein.

otherwise fit and able properly to perform the proposed services" is based upon findings that appear *only* in the examiners' report, but are not mentioned in the Division's report. Taking note of this fact in their final pleading before the Commission, the private appellants defended the Division's reliance upon factual findings that appear only in the examiners' report.[9]

As found by the court below, "at no point in its report did the Division reject any of the Examiners' findings of fact" (App. 1292). Moreover, in its brief before the District Court, the Government asserted that the Division's report "does not reflect any disagreement with the examiners over what the witnesses said or what the exhibits stated" (App. 1293).

In another erroneous assessment of the Division's order, the private appellants indicate that the Division felt that the examiners' analysis of evidence on a commodity basis had resulted in an "atomized treatment" (Brief 8). No such definitive or conclusive finding was made by the Division. It stated that a geographic statement of the evidence might point up the facts more clearly. This, however, was unnecessary inasmuch as the examiners, within the commodity breakdown which they used, carefully analyzed the geographic aspect of the testimony. Thus, the examiners' findings and report were predicated not

9. *E.g.*, "The examiners' recitation of the details of Johnson's financial picture leaves no room for doubt as to its financial ability to do what it proposes. The examiners' findings are in accord with and are fully supported by the evidence. The Commission *properly relied upon those findings* in reaching its ultimate conclusion . . ." Reply of Johnson to Petitions for Reconsideration, dated August 16, 1972, at 43 (emphasis added). The same argument appears in Bowman's Reply to the same petitions, dated August 10, 1972, at 36.



only upon a general commodity basis, but also upon a geographic basis (App. 980-1042).[10]

Another factual mistake in the private appellants' brief is the statement at page 9 that petitions for reconsideration of the Division's decision were pending from December 30, 1971 until September 6, 1972. Actually, the Division's decision was not served until January 24, 1972 (App. 101). Following the service of such order, appellees and others filed petitions for reconsideration, and all but one of the petitions were summarily denied by the Commission only 12 working days after the replies thereto were filed.[11]

Other factual misstatements in private appellants' brief will be discussed in the "Argument" section, *infra*.

The present suit charged that the Division's decision was invalid and prayed that the enforcement of its order be enjoined.[12] In its opinion the District Court summarized the Division's report in detail and carefully set forth the reasons why it found the Division's order to be invalid (364 F. Supp. 1239; App. 1292). The opinion is clear and comprehensive. Briefly stated, the court concluded that there was no rational basis for the determinative findings and conclusions in the Division's report. It found that the Division arbitrarily and capriciously applied a discriminatory double standard by, for example, giving great weight to evidence favorable to private appellants while ignoring or expressly refusing to accord weight to the same or similar evidence favorable to appellees.

10. A summary of the examiners' handling of the witness testimony pointing up the geographic, as well as the commodity basis of consideration, is found in appellees' initial brief to the court below, beginning at 40.

11. The exception being that of Jones, whose application was reopened and granted. See n. 8, *supra*.

12. The complaint set forth in comprehensive detail the numerous grounds upon which appellees rely. It was not challenged by any pre-hearing motion or other attack.

The court, therefore, set aside the Division's order and enjoined the issuance of the certificates authorized therein, concluding that the Division's findings and conclusions were "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law", pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706. The court affirmatively refrained from expressing any opinion concerning the ultimate issue of public convenience and necessity, recognizing the Commission's exclusive prerogative to make such determination.

Following judgment, the Government moved the court to amend the judgment and remand the proceedings to the Commission. This motion was based upon the allegation that the court had no jurisdiction to do other than as requested by the Government and that remand was, therefore, mandatory[13] (App. 795). The court denied the motion (364 F. Supp. 1239, 1266; App. 808, 809-823).

## SUMMARY OF ARGUMENT

The reviewing court made a probing, in-depth review of the entire agency record, and found substantial legal error. It concluded that the agency's actions, findings and conclusions were without rational basis; that the agency violated basic rules of fairness; and that its report "sounds more in advocacy than in impartial adjudication" (App. 1319).

The court properly reviewed the entire record, and correctly refused to limit its consideration to portions of the record or to one side of the case.

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13. This was the only remand question raised in the court below. Therefore, the only remand question properly before this Court is whether remand was mandatory. See *infra*, p. 65.



The standards for judicial review of this proceeding are found in § 706 of the APA. This section must be *considered in its entirety*. The substantial evidence test of § 706(2)(E) is applicable. Also applicable is the arbitrary or capricious test of § 706(2)(A). Neither test is exclusive. Neither test is paramount. Either or both may be applied to the review of agency action based upon an adjudicatory hearing. The latter standard is particularly descriptive of the prejudicial and discriminatory action that permeated the agency's report in this case, because such action was "arbitrary," "capricious," and "without rational basis."

In reaching its conclusions, the reviewing court did *not* find the actions and conclusions of the agency to be supported by substantial evidence, nor did the court find that the agency made erroneous findings of fact. Instead, the court properly concluded, *as a matter of law*, that the agency's improper treatment of the evidence resulted in conclusions that lacked a rational basis. In so holding, the court was not weighing the evidence.

The reviewing court's construction and application of the judicial review provisions of the APA were fully consistent with the legislative history and plain language of § 706. Both compel recognition of the six *separate* standards of review enumerated therein. No new standard of review was applied, nor was there an enlargement of the statutory scope of review. The decision specifically follows the precedents of this Court and comports with the practice of reviewing courts in other jurisdictions . Where agency action is lacking in rational basis it is arbitrary and capricious and must be set aside.

After finding substantial legal error in the agency's report, the court set the order aside and enjoined its enforcement. Following entry of judgment, the Government (but not the private appellants) moved the court to amend

the judgment on the ground that the court lacked jurisdiction to set aside the agency order without directing that the case be remanded for further proceedings. The Government's suggestion, made for the first time after entry of judgment, was based solely on the contention that the court *must*, not *should*, remand the proceeding. No one suggested to the court that remand would serve any useful purpose. The District Court overruled the motion, noting that its judgment did not preclude the agency from proceeding to determine the issue of public convenience and necessity. The court held that, under the unique circumstances of this case, further determination of this issue by the agency could best be made on a new record, explaining that use of the present record would impede rather than facilitate such determination. The court found that the present administrative record is beyond repair: it includes tremendous portions unrelated to the three applications here involved; it includes improper political issues injected after issuance of the examiners' report; and it includes evidence presented in 1966 and 1967 that would not be helpful to the Commission in making a further determination of the present and future public convenience and necessity.

Remand is not mandatory. It is a matter committed to the sound discretion and considered judgment of the reviewing court. Unless it would serve a useful purpose, remand is inappropriate. The court properly concluded that it would serve no useful purpose here.

A comprehensive, in-depth review and fair assessment of the record as a whole was made by the reviewing court. Accordingly, this Court need not make an independent review of the agency record, but, instead, should follow its usual rule of noninterference. The unanimous decision of the three-judge court should be affirmed.



## ARGUMENT

### I

### The Court Properly Found Substantial Error in the Division's Decision

Appellants place emphasis upon the size of the agency record. It is indeed large since it embraces major application proceedings of 10 carriers. Although this case involves only the applications of Bowman, Johnson, and Red Ball,[14] appellants emphasize the large number of witnesses that testified in support of the 10 applications, considered collectively.[15] The presentation of 10 applications on a single record produced many unique developments, due to the overlapping aspects of the applications and the various applicants' opposition to the other applications. Each applicant's presentation, therefore, embraced criticisms of other applicants' service and demonstrated that all of the involved carriers, applicants and protestants alike, operate under similar conditions and perform similar services.

None of the applicants proposed to render any new or different type of service or to provide service at any point not served by multiple carriers. They sought only to supplement existing service by performing a highly selective

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14. A separate suit is pending as a result of the Commission's approval of the Jones application on the basis of the same record. See n. 8, *supra*.

15. The examiners noted: "Almost every shipper . . . is inclined to support the application of any carrier who promises better service than he already has available. As the Commission has noted in other proceedings [*Transamerican Freight Lines, Inc. —Purchase (Portion)—Allen Motor Lines*, 59 M.C.C. 695, 722], the number of shipper witnesses which an applicant can present at a hearing to testify that their service is inadequate appears to be governed largely by the energy put forth and the expense it is willing to incur" (App. 878).

operation, serving only the major cities, while leaving to others the responsibility of handling the less desirable traffic at smaller communities (App. 1283).

In their detailed and comprehensive report, the examiners analyzed *all* of the evidence and summarized their findings of fact in a series of appendices to their report. They concluded that approval of *any one* of the applications would result in a deterioration in existing service, both at major cities and at smaller points along the proposed routes, contrary to the National Transportation Policy[16] (App. 889-892, 903-905).

Exceptions were filed that challenged the ultimate conclusions of the examiners. "No exception was taken, however, to any specific finding of fact" (App. 1292). In their brief, at 42-43, the private appellants argue that their exceptions did not concede the correctness of the examiners' findings of fact, but they still point to no inaccuracy in such findings. To demonstrate the absence of any challenge to the examiners' statement of the facts, the exact exceptions filed by such parties are quoted in Appendix I hereto.

The examiners' decision was based strictly upon the facts of record (including facts specifically made the subject of official notice). When the case came before a Division of the Commission, however, the character of the

16. 49 U.S.C. preceding § 1. "To the extent that carriers may be failing properly to perform under their certificates and under the terms of section 216(b) of the Interstate Commerce Act, remedies are available other than the granting of authority to more carriers. We do not believe that authorization of additional carrier services in an area served by an adequate number of carriers fosters sound economic conditions in transportation; nor is it the only way to minimize the service failures and improve service to the public. Where complaints of these failures have been made to the carriers or proper authorities, remedial action has been taken" (App. 874).



proceeding was changed by the injection of extraneous issues, largely political in nature.[17] The entire tenor of the Division's report differs sharply from that of the examiners'. Every contention advanced by the parties, and all facts bearing upon such issues were discussed in detail in the examiners' report; and it is obvious that they considered such issues in a wholly impartial manner. The Division's report, however, discussed only those facts favorable to the applicants and completely ignored facts and issues stressed by protestants. Although contrary conclusions were reached by the Division, its report did not take issue in any respect with any finding of fact set forth in the examiners' report.

This proceeding was before the District Court exactly one year.[18] At the time of oral arguments on the merits, appellees introduced the entire record made before the Commission. Previously, each Judge[19] had been furnished with: (a) a comprehensive abstract of the evidence prepared by Johnson and Bowman (7 volumes; 3,200 pages);[20] (b) another comprehensive abstract of the evidence pre-

17. "After intervening, the Johnson shippers injected new issues, not presented to the Examiners. The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration" (App. 1302).

18. During its pendency, a temporary restraining order was in effect. It was issued following submission of affidavits, briefs and oral arguments, as described in the court's opinion which contains detailed findings and conclusions. 350 F. Supp. 539 (W.D. Ark. 1972).

19. The panel was composed of Chief Judge Pat Mehaffy, United States Court of Appeals, Eighth Circuit; Senior District Judge John E. Miller; and District Judge Paul X Williams.

20. Acknowledging the size of the record, these appellants urged the District Court, as they had urged the Commission, to utilize such abstract which "capsules this huge record into workable proportion" (Bowman Brief, at 3-4; Johnson Brief, at 9).

pared by Red Ball and appellees (7 volumes; 1,647 pages);[21] (c) an extensive summary of the evidence contained in the 300-page report of the examiners; (d) another summary contained in the Division's 225-page report; and (e) seven comprehensive briefs containing detailed quotations and summaries of the evidence (over 1,200 pages). Each judge therefore had before him summaries, excerpts, charts and briefs totaling approximately 6,600 pages.

During the arguments, the parties urged the court to render a prompt decision (App. 531-532, 541-542, 555-556). The court, acknowledging familiarity with the briefs previously submitted, announced that it would prepare its decision "as quickly as we can" (App. 464, 566, 581).[22] The court's opinion demonstrates its independent research and its careful consideration of every facet of the case.

Appellees challenged the Division's report, primarily on the ground that the Division acted arbitrarily and capriciously and grossly abused its discretion. The reviewing court *found much wrong with the Division's decision*. It did not base its decision expressly upon a conclusion that the Division's action "was not supported by substantial evidence." At the same time, however, the court clearly did *not* find that there *was* substantial evidence to support the Division's action. The court reviewed the entire agency record and concluded that the Division had acted arbitrarily and capriciously and had abused its discretion. Repeatedly, the court found that there was no rational basis for the actions, findings and conclusions

21. "The two sets of abstracts are strikingly similar and provide an accurate summary of the evidence of record" (App. 1280).

22. Private appellants insinuate that the court acted hastily (Brief 10); but it had 7 months to study the initial brief, 4 months to study defendants' briefs, 2 months to study the reply brief, and 6 weeks to consider oral arguments before rendering its decision.



of the Division, and in each instance the court described in detail the basis for its conclusions. The court pointed out that in some instances the Division's conclusions were directly contrary to the Division's findings of fact. In other instances it found that the Division ignored facts of record and, in still other instances, it found that the Division applied a prejudicial double standard to its treatment of the evidence. In essence, the court found that the Division did not apply the "basic rudiments of fairness" (App. 1314). Its analysis of the Division's action was summarized as follows:

> "Viewed in its entirety, the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion. In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication." (App. 1319).

All parties agree that the reviewing court was proper in applying the judicial review standards found in Section 10(e) of the Administrative Procedure Act, 5 U.S.C. § 706 [hereinafter referred to as § 706].[23] Appellants base their

23. This section provides that the reviewing court shall:

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

*(Continued on following page)*

appeal on the contention that the reviewing court erred in refusing to apply the "substantial evidence" test of § 706(2)(E) as the *only* standard applicable to its review of this proceeding. Appellees contend that the court properly considered § 706(2) in its entirety and correctly applied the "arbitrary or capricious"[24] test as the standard that best describes the discriminatory and prejudicial action that permeated the Division's report; and, further, that *the court unquestionably reached the right result.*

In deciding this case, however, there is no compelling necessity to catalogue the court's terminology in terms of the separate standards of review prescribed in § 706(2). Appellants cannot deny that: (1) the court engaged in an extensive in-depth review of the entire agency record, and (2) the court found that there was much wrong with the agency's decision.

It would be a gross miscarriage of justice to permit the Commission's order in this case to become effective. The Division's report was not based upon the evidence of record, nor upon a consideration of the National Transportation Policy, nor was it made in furtherance of the public interest. The reviewing court correctly found that the agency's action was unlawful and properly enjoined its enforcement.

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Footnote Continued—

> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error."

24. The provisions of § 706(2)(A) will, for convenience, be referred to as the "arbitrary or capricious" test, but, of course, this also embraces "an abuse of discretion" and "otherwise not in accordance with law."



## II

## The Reviewing Court Applied Proper Standards of Judicial Review

The reviewing court clearly recognized that "[t]he limited scope of judicial review of the decisions of independent agencies is a well settled principle of administrative law," and in discussing this principle, the court cited and quoted from the identical authorities relied upon by the appellants (App. 1304).[25]

The reviewing court engaged in an exhaustive, detailed review of the agency proceeding and reached the unanimous conclusion that the Division's action was unlawful for many reasons. The court's opinion described in detail the action, findings, and conclusions of the Division that were not proper, and explained, also in detail, the bases for its decision. As it was required to do, the court reviewed the entire record of the proceeding before the Commission, and tested the lawfulness of the agency's action under the standards prescribed in § 706.

Private appellants argue that the "substantial evidence rule was held inapplicable" (Brief 12). This is not correct. The court recognized the applicability of the several standards of § 706(2), including the substantial evidence test and the arbitrary or capricious test (App. 1304, 1305). More specifically, the court expressly rejected appellants' argument that it should *limit* its review to those portions of the record cited by them (App. 1309). Instead

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25. *E.g., Consolo* v. *Federal Maritime Commission*, 383 U.S. 607 (1966); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951); *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515 (1946); *Willis Shaw Frozen Express, Inc.* v. *United States*, 256 F. Supp. 257 (W.D. Ark. 1966); and *Patterson* v. *United States*, 178 F. Supp. 771 (W.D. Ark. 1959).

of limiting its review "to a determination of the substantiality of such portions of the evidence" referred to by appellants in their briefs, the court recognized its duty under § 706 to review "the record in its entirety . . . including the body of evidence opposed to the Board's view" quoting from *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) (App. 1309). Also quoted was Justice Frankfurter's statement (340 U.S., at 488) that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight" (App. 1307).[26]

Appellants urged the court to adopt the outdated procedure followed by some courts prior to the enactment of the APA. As expressed by Justice Frankfurter "[u]nder this interpretation, the courts need to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored." 340 U.S. at 481. The reviewing court properly rejected this argument (App. 1309).

The court also rejected appellants' contentions that it should limit its consideration to a determination of the *substantiality* of the evidence (App. 1307). The court properly ruled that it could not confine its review to an examination of the substantiality of the evidence in a case such as this where it was charged that the conclusions reached by the agency lacked rational basis (App. 1307). The court recognized that § 706(2)(A) requires the reviewing court to "set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (App. 1307).

26. Of course, the statute itself requires the court to review "the whole record or those parts of it cited by a party." 5 U.S.C. § 706.



## A

## The Arbitrary or Capricious and the Substantial Evidence Standards of the Administrative Procedure Act Are Not Synonymous

Appellants take the position that the court cannot properly set aside agency conclusions, based upon an adjudicatory proceeding, on the ground that the agency acted arbitrarily, or capriciously, or abused its discretion, or took action that was otherwise not in accordance with law. They argue that, in a proceeding of this type, the court can do nothing more than examine the substantiality of the evidence. As stated by private appellants, "where such substantial evidence supports the agency decision, the judicial review function of the Court is ended"[27] (Brief 15).

In its Jurisdictional Statement, the Government asserted that "absent questions of the agency's authority which are not involved here, an agency determination in adjudicatory proceedings which is supported by substantial evidence cannot properly be found to be 'arbitrary or capricious'" (J.S. 10). Now, the Government is not as rigid. It asserts at one point that the agency's decision must be upheld if "free of legal error and supported by substantial evidence in the record as a whole"[28] (Government Brief 10). At another point, the Government concedes that "if the ultimate conclusion were totally unrelated to the findings, then the decision of the agency would be 'arbitrary and capricious' even though each

27. They made similar arguments in the District Court (Bowman Brief 10; Johnson Brief 13; Lorch Brief 6).

28. Clearly, the court here found the agency's action replete with legal error and, as hereafter discussed, the court did not find it to be supported by substantial evidence.

finding might be supported by substantial evidence" (*Id.* at 21, n. 8).

Appellants predicate their argument on the proposition that the reviewing court found the Division's order to be supported by substantial evidence. Not so! The court did not make such a finding. It found that the Division's conclusions were based upon subordinate findings "that can be supported only by a consideration of portions rather than the entire record," and that the Division's "ultimate conclusion" was not based upon "adequate subordinate findings" (App. 1309, 1317). The court made it clear that it did not consider the Division's conclusions to be supported by substantial evidence when it found that "the Division's report indicates a predilection to grant these particular applications, followed by a strained attempt to marshal findings to support such conclusion" (App. 1319).

Unquestionably the court did not find that substantial evidence supported the Division's critical conclusion that "protestants have not shown that they would be seriously adversely affected by such grants." On the contrary, the court held: "This conclusion is directly contrary to the Division's findings of fact set forth in an appendix to its report" (App. 1316).

The Government takes the position that, "as applied to fact finding" the arbitrary or capricious test "is synonymous with the 'substantial evidence' test." More specifically, the Government asserts that the arbitrary or capricious test "is not an additional test," but is merely a "generic standard" that finds "specific application" in the remaining standards of § 706(2) (Brief, at 19, 21).

This narrow construction is incompatible with the language of the statute. In fact, its invalidity is illustrated by the Government's recognition that even if the



substantial evidence test is met, an agency decision can still be "arbitrary or capricious" if "the ultimate conclusion were totally unrelated to the findings" (*Id.* at 21, n. 8). Logically, of course, this *must* be recognized; otherwise, the arbitrary or capricious standard would have no effective meaning.

At another point, the Government again demonstrates the fallacy of its argument by conceding that "action taken without a rational basis" must be recognized as "arbitrary or capricious" action (*Id.* at 18). That is *exactly what the reviewing court held in the case at bar* (App. 1317). Time after time, the court found that there was "no rational basis" for the Division's action. In at least seven instances[29] the court made this finding in regard to significant conclusions reached by the Division, and in each instance the court described in detail the action taken by the Division and explained why there was "no rational basis" for such action. The court also made numerous *additional* findings of agency action found to be arbitrary or capricious.[30] Some of these examples are quoted in Appendix II hereto.

As noted, the court stated that "arbitrary or capricious" means "without rational basis." This is the consistent definition given the standard.[31] The suggestion

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29. App. 1310 (para. 12), 1311 (para. 13), 1311 (para. 14), 1312 (para. 15), 1313 (para. 16), 1314 (para. 21), 1316 (para. 21).

30. *E.g.*, App. 1311 (para. 12), App. 1311 (para. 13), App. 1313 (para. 17), App. 1313 (para. 18), App. 1314 (para. 20), App. 1315 (para. 21).

31. *E.g., Carlisle Paper Box Co.* v. *NLRB*, 398 F.2d 1, 6 (CA3 1968); *South Dakota* v. *Volpe*, 353 F. Supp. 335, 339 (S.D. 1973); *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529, 535 (W.D. Mo. 1966); *Eastern Cent. Motor Carriers' Ass'n* v. *United States*, 239 F. Supp. 591, 594-595 (D.C. 1965). See also, *e.g., Hughes Air Corp.* v. *CAB*, 482 F.2d 143, 145-146 (CA9 1973); *Nashua Motor Express, Inc.* v. *United States*, 230 F. Supp. 646, 650 (N.H. 1964).

that the substantial evidence standard should be equated with the arbitrary and capricious standard is an argument advanced for the first time in appellants' briefs before this Court.

The reviewing court clearly understood and properly applied the standards of § 706(2) and correctly characterized the agency's error in terms of such standards. This section requires the reviewing court to hold unlawful and set aside agency *action, findings,* and *conclusions* found to violate *any* of the *six separate standards* stated in subparagraphs (A) through (F). The separate nature of these standards is manifested by use of the disjunctive term "or" that appears before the last of the six standards.[32]

The Government's argument that the arbitrary or capricious standard "is not an additional test" is directly contrary to the views expressed by this Court as well as other courts that have been called upon to consider the scope and meaning of this statute. While citing no decision to support this contention, appellants criticize the District Court for its reliance upon *Citizens To Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402 (1971). They

32. The disjunctive term "or" is employed in a statute to show that the failure to comply with *any* requirement therein imposes liability. 1A Sutherland, Statutory Construction § 21.14 (C. Sands 4th ed. 1972). Furthermore when, in a statutory enumeration of things, the disjunctive term "or" is placed immediately before the last member of the series (as between § 706(2)(E) and (F)), the term "or" is understood to exist between the previous members. 50 Am. Jur. *Statutes* § 281, at 267.

Congressional intent to separate the standards by use of the term "or" was noted on the floor of Congress during debate over the standards for review in § 5(a) of the Walter-Logan bill, a forerunner of § 10(e) of the APA (§ 706). See text *infra*, pp. 34-38. Congressman Hobbs stated: ". . . [T]hese provisions are in the disjunctive; not in the conjunctive. Each of the grounds under consideration is separated from the next by the word 'or.' So that for *any* of these reasons the court may set aside the decision of the board." 86 Cong. Rec. 4669 (1940) (emphasis added).



take the position that this Court overspoke itself in *Overton* and that the District Court's reliance upon this decision was misplaced. We strongly disagree. *Overton* should not be modified as suggested by appellants since it does nothing more than apply the express provisions of the statute in a way that is fully consistent with the legislative history of the Act.[33]

In *Overton* this Court stated that in determining the "standard for review" it is necessary to "look to § 706 of the Administrative Procedure Act . . . which provides that a 'reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found' not to meet *six separate standards.*" 401 U.S., at 413 (emphasis added). The Government takes the forthright position that this Court was wrong; that the statute does *not* set forth "six separate standards"; that the arbitrary or capricious standard "is not an additional test" but is simply a "generic standard" that must find "specific application" in one of the other standards stated in the section (Brief 11-21).

The error of this attack on *Overton* becomes more apparent when it is borne in mind that the agency decision involved in that case was set aside *solely* because it failed to stand scrutiny under the arbitrary or capricious standard—not because it failed to meet one of the other standards embodied within this so-called "generic standard".

Appellants contend that the arbitrary or capricious standard should be followed only in nonadjudicatory proceedings. They argue that only the substantial evidence standard can be applied to agency action resulting from adjudicatory proceedings. This does not stand the test of logic, and would, indeed, compel a modification of *Over-*

33. See *infra*, p. 34 *et seq.*

*ton* since the contention runs contrary to the Court's very deliberate analysis of the statute:

> "*In all cases* agency action must be set aside if the action was 'arbitary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements. . . . In certain narrow, specifically limited situations, the agency action is to be set aside if the action was not supported by 'substantial evidence.' And in other equally narrow circumstances the reviewing court is to engage in a de novo review of the action and set it aside if it was 'unwarranted by the facts.'" 401 U.S., at 413-414 (emphasis added).

This Court, in *Overton*, referred to the arbitrary or capricious test as "the generally applicable standards of § 706 [that] require the reviewing court to engage in a substantial inquiry." While acknowledging the presumption of regularity attributable to agency action, the Court emphasized that the presumption "is not to shield [agency] action from a thorough, probing, in-depth review." 401 U.S., at 415. Verification that the agency acted within its statutory authority is not enough. Section 706(2) (A) requires a finding that the actual choice made was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. . . . To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 401 U.S., at 416. This is the law applicable to the case at bar, and this is *exactly* what the reviewing court followed.

There is no logical basis to support the Government's position that this type of review *must* be made in non-adjudicatory proceedings and that it *cannot* be made in adjudicatory proceedings.



If an agency fails to base its decision "on a consideration of the relevant factors" it cannot "shield [its] action from a thorough, probing, in-depth review" simply because it conducted a hearing. The provision for hearing does not constitute license to disregard "the basic rudiments of fairness."

Hearing or no hearing, an agency cannot be permitted to apply a discriminatory double standard to the parties involved. Regardless of the nature of the proceeding, the "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case" (App. 1311). Clearly, a hearing is not a shield to protect improper agency action. On the contrary:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced, or to make an essential finding without supporting evidence, is arbitrary action."[34] (App. 1314).

The reviewing court found much wrong with the Division's treatment and consideration of the evidence.[35] In reaching its conclusions, the court made the type of "thorough, probing, in-depth review" required by *Overton*. It did not act "automata" nor "rubberstamp" the agency's decision. Instead, it exercised the type of "informed professional critique" commended by Justice Frankfurter as

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34. *Baltimore & O.R. Co. v. U. S.*, 264 U.S. 258, 265 (1924).

35. *E.g.*, "the Division's report fails to meet the requisites of clarity." (App. 1310). Appellants do not base their appeal on this finding, since they recognize that it was not determinative of the issues, although the Government does suggest that the Court's criticism was "unwarranted." (Brief 33-34).

the ultimate safeguard against administrative autocracy. *Universal Camera Corp.*, 340 U.S., at 489.

The court was proper in conducting its review pursuant to the standards of § 706(2) (A). Such standards, when applied to an agency's *action, findings,* and *conclusions,* do apply to adjudicatory proceedings and do not prescribe standards that are "synonymous with the 'substantial evidence' test."

In applying the 706(2) (A) standard to this action, the court was merely accepting its statutory responsibility, recognized by reviewing courts in jurisdictions throughout the country. It was neither fashioning a new standard of review, nor enlarging upon the proper scope thereof.

For example: *Campbell Sixty-Six Express, Inc.* v. *United States,* 258 F. Supp. 529, 535 (W.D. Mo. 1966) ("We find that the 'ultimate conclusion' reached by the Commission on the test of actual competition is not based on any 'adequate subordinate findings' and is therefore, in the legal sense, 'arbitrary and capricious'."); *Columbia Shippers and Receivers Ass'n, Inc.* v. *United States,* 301 F. Supp. 310, 319 (Del. 1969) (". . . the Court must apply, *in addition to* the 'substantial evidence' test generally applicable to this action, the standard of review set forth at 5 U.S.C. § 706(2) (A)."); *Eastern Central Motor Carriers Ass'n* v. *United States,* 239 F. Supp. 591, 594 (D.C. 1965) ("Under Section 10 of the Administrative Procedure Act, as applicable here, an order of the Interstate Commerce Commission may be invalidated if it is *either* '(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . (3) in excess of statutory rights . . . (5) unsupported by substantial evidence . . .'."); *Mitchell Bros. Truck Lines* v. *United States,* 225 F. Supp. 755, 758 (Ore. 1963), *aff'd* 378 U.S. 125 (1964) ("[The



order is invalidated] if it is *either* (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; *or* . . . (5) unsupported by substantial evidence . . ."); *Heavy-Specialized Carriers Conference* v. *United States,* 231 F. Supp. 968, 970 (E.D. Mo. 1964) ("The scope of judicial review is narrow and we cannot substitute our own view for that of the ICC, if its view is supported by substantial evidence *and* is not arbitrary or capricious."); *Nashua Motor Express, Inc.* v. *United States,* 230 F. Supp. 646, 650 (N.H. 1964) (" . . . this court is bound to inquire into every aspect of the proceedings below wherein it may appear that the Commission has otherwise applied an erroneous standard of law, *or* has made arbitrary findings, *or* has reached ultimate conclusions without adequate subordinate findings . . ."); *Youngblood Truck Lines, Inc.* v. *United States,* 221 F. Supp. 809, 812 (W.D. N.C. 1963) ("The scope of judicial review of an Interstate Commerce Commission order includes consideration of whether the ultimate conclusions of the Commission are supported by substantial evidence on the record considered as a whole, are free from errors of law, *and are not so arbitrary or capricious as to constitute an abuse of discretion.*"); *Omaha Grain Exchange* v. *United States,* 194 F. Supp. 929, 934 (Neb. 1961) ("[Commission order will be affirmed] unless we find *either* that the orders are capricious *or* arbitrary *or* contrary to statutory authority *or* unsupported by substantial evidence."); *Stott* v. *United States,* 166 F. Supp. 851, 855 (S.D. N.Y. 1958) ("[The APA] provides . . . that the reviewing court shall 'hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,' . . . (5) unsupported by substantial evidence . . ."); *Clearfield Cheese Co.* v. *United States,* 308 F. Supp. 1072, 1074 (W.D. Mo. 1969) ("Section 706, Title 5, U.S.C. . . . states that review shall

be on the 'whole record' and that the reviewing court shall 'hold unlawful and set aside agency action, findings and conclusions found to be' arbitrary, capricious, abuse of discretion, or otherwise unlawful *or* contrary to a constitutional right, power, privilege or immunity, *or* in excess of agency jurisdiction, *or* unsupported by substantial evidence, *or* arrived at without observance of lawful procedure *or* 'unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court'."); *Charlton* v. *United States*, 412 F.2d 390, 398 (CA3 1969) (Stahl, J., concurring: "The very listing of the substantial evidence test as a separate and alternative ground for reviewing agency action indicates a legislative intent that it be a *different standard* from that permitting the setting aside of the findings or conclusions of an agency as arbitrary, capricious or an abuse of discretion."). (Emphasis added in all quotations above.) See also, *Associated Indus. of N.Y.S., Inc.* v. *United States Dept. of Labor*, 487 F.2d 342, 349-350 (CA2 1973); *Federal Compress & Warehouse Co.* v. *United States*, 319 F. Supp. 917 (W.D. Tenn. 1970); *Short Line, Inc.* v. *United States*, 290 F. Supp. 939 (R.I. 1968); *Petroleum Carrier Corp.* v. *United States*, 258 F. Supp. 611 (M.D. Fla. 1966).

Private appellants make an ineffective attempt to distinguish the cases cited above that were included in Appellees' Motion to Dismiss and Affirm. They state: "None of them involved the substitution of the arbitrary and capricious rule for the substantial evidence rule in reviewing an agency decision based upon a formal hearing on the record" (Brief 35). No question of substitution is involved. As shown above, however, *all* such cases recognized the applicability of the arbitrary or capricious test to "agency decision based upon a formal hearing on the record," and, in several, the agency action was set aside, *not for lack of substantial evidence*, but because such action failed to comply with the standards of § 706(2) (A). That is appellees' point! The reviewing court, in the case at bar, applied the same scope of judicial review consistently followed by reviewing courts throughout the country.



## B

## Other Applications by This Court of the Arbitrary or Capricious Standard for Adjudicatory Proceedings

In addition to *Overton*, this Court on other occasions in reviewing adjudicatory proceedings has recognized that the arbitrary or capricious standard is separate from the substantial evidence standard. The arbitrary or capricious standard has been applied by this Court together with, or completely apart from the substantial evidence test. This Court has not found it necessary in every instance to indicate expressly that it was utilizing the arbitrary or capricious standard; but, in such instances, the rationale for each decision allows no other conclusion.

The separateness of the two standards was impliedly recognized in *Atchison, T. & S.F.R. Co.* v. *Board of Trade*, 412 U.S. 800 (1973), wherein the ICC, after hearing, approved separate charges for services previously provided under base rates. The three-judge District Court held that the conclusions underlying the agency action *were supported by substantial evidence*, but, notwithstanding, set the order aside because the Commission "had not adequately justified its failure to follow 'its long established rule' " for determining the reasonableness of such charges. *Id.*, at 805.

There was no majority opinion, but five members of the Court agreed that the District Court had acted properly in this respect. Four Justices, after acknowledging

that the scope of review under § 706 is limited and that the agency's conclusions *were supported by substantial evidence*, agreed with the reviewing court's action because "we cannot discover an expressed reason for permitting the railroads to reduce their services without showing that the rates they propose to maintain are reasonable rates for the service they intend to provide." *Id.*, at 817.

In *Atchison*, the exact § 706 standard under which the agency action was found to have been correctly set aside was not stated; but the arbitrary or capricious standard was the *only* test that *could* have been applied since substantial evidence was *conceded* and the remaining tests of § 706(2) were clearly inapplicable. Even if the agency action was not arbitrary, or capricious, or an abuse of discretion (and it may well have been), it was nonetheless "otherwise not in accordance with law."

*Consolo* v. *Federal Maritime Com'n*, 383 U.S. 607 (1966), cited by appellants, recognizes the separateness of application of the arbitrary or capricious standard and the substantial evidence standards for adjudicatory proceedings. The reviewing court based its decision solely upon its finding that the agency action was contrary to the "substantial weight of the evidence." *Id.*, at 618.[36] In reversing, this Court held that the reviewing court misunderstood the substantial evidence standard.[37] In so

36. Because the reviewing court found the agency acted contrary to the substantial weight of the evidence, the reviewing court termed this error an abuse of discretion. The case at bar differs. The District Court found violation of the arbitrary or capricious standard because the agency action lacked a rational basis.

37. "In effect, the standard of review applied and articulated by the [reviewing court] in this case was that if 'substantial evidence' or 'the substantial evidence' supports a conclusion contrary to that reached by the Commission, then the Commission must be reversed. This standard is not consistent with that provided by the Administrative Procedure Act." 383 U.S., at 618-619.



holding, this Court emphasized the applicability of both the arbitrary or capricious standard *and* the substantial evidence standard when it quoted § 706 as the barometer for judicial review and itself placed "or" between the two standards.[38]

The separate functions of the two standards, as applied to the same agency action, findings and conclusions, were recognized in *Gilbertville Trucking Co.* v. *United States*, 371 U.S. 115 (1962), a case involving Commission disapproval, after hearing, of a proposed merger of motor carriers. The agency action was premised upon the finding and conclusion that the merger had in effect unlawfully taken place prior to the application. The District Court found the agency action both reasonable and supported by substantial evidence. This Court, in agreeing with the conclusion, held that its "review of this [agency] conclusion [was] limited to consideration of whether it [had] a *rational* basis *and* [was] supported by substantial evidence." *Id.*, at 126 (emphasis added). Thus, this Court separately applied both the arbitrary or capricious standard (rational basis) *and* the substantial evidence standard to the same finding and conclusion of the Commission.

This Court also set aside an ICC order, entered in an adjudicatory proceeding, for other than a lack of substantial evidence, in *Schaffer Transp. Co.* v. *United States*, 355 U.S. 83 (1957), a decision relied upon by private appellants. There, the Commission denied a motor carrier's application to provide service between points served exclusively by rail. The discretion invested in the Commission was recognized, but with the following caveat:

38. This Court noted that §706 "gives a reviewing court authority to 'set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, [or] an abuse of discretion . . . [*or*] (5) unsupported by substantial evidence . . .'" 383 U.S., at 619 (additions in brackets by Court; emphasis added).

> "But that discretion must be exercised in conformity with the declared policies of the Congress. To see whether those policies have been implemented we look to the Commission's own summary of the evidence, and particularly to the findings, formal or otherwise, which the Commission has made. Just as we would overstep our duty by undertaking to evaluate the evidence according to our own notions of the public interest, *we would shirk our duty were we summarily to approve the Commission's evaluation of the record without determining that the agency's evaluation had been made in accordance with the mandate of Congress.*" *Id.*, at 88 (emphasis added).

The agency was found to have erred both in failing to make an evaluation of the "inherent advantages" of the proposed service, and in discounting testimony of witnesses supporting the application. It was held that "since the findings as to the adequacy of rail service do not provide this Court with a basis for determining whether the Commission's decision comports with the National Transportation Policy, that decision must be set aside. . . ." *Id.*, at 92.

The errors committed by the agency in *Schaffer* are in many respects similar to those of the agency in this case. The agency action was not set aside in *Schaffer* because of a lack of substantial evidence. As in *Atchison*, the standard under § 706 for which the agency action was set aside was not expressly stated; but the reasons given for setting aside the action clearly fall within the perimeters of the arbitrary or capricious standard.

As discussed *infra*, see pp. 42-43, § 706 merely restated the standards for judicial review in effect prior to enactment of the APA in 1946. In *McLean Trucking Co.* v.



*United States*, 321 U.S. 67 (1944), another decision relied upon by private appellants, one of the bases for challenging approval of carrier consolidations was an attack on an agency conclusion that, following consolidation, a certain carrier would not be affiliated with a railroad. This Court upheld the conclusion of the agency, not because it found the conclusion was supported by substantial evidence, but because it could not "find anything arbitrary or unreasonable in the conclusion. . . ." *Id.*, at 91. In *United States* v. *Carolina Freight Carriers Corp.*, 315 U.S. 475 (1942), the certificate of public convenience and necessity was set aside by the Court, not on the ground that the agency findings were not supported by substantial evidence, but because this Court found that the agency applied improper standards in its evaluation of the evidence. That "[t]he judicial function is exhausted when there is found to be a *rational* basis for the conclusions approved by the administrative body" was set forth in *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 287 (1934) (emphasis added). And in *Silberschein* v. *United States*, 266 U.S. 221, 225 (1924), this Court held that agency action could be reviewed if it was "wholly unsupported by the evidence, or [was] wholly dependent upon a question of law, or [was] seen to be clearly arbitrary or capricious." Accord, *United States* v. *Williams*, 278 U.S. 255 (1929).

The foregoing demonstrates that for adjudicatory proceedings, this Court, in accordance with the clear and plain principles now embodied in § 706, has long recognized and applied the arbitrary or capricious standard as a separate standard of review.

## C

### The Legislative History of the Act Demonstrates Proper Application of Section 706

In applying § 10 of the APA, the District Court fully complied with the express language of the section and the intent of Congress, as reflected by the legislative history of the Act.

The content of the Administrative Procedure Act is the result of extraordinary, meticulous, "paintaking and detailed study and drafting." S. Doc. No. 248, 79th Cong., 2d Sess. 241 (1946) [hereinafter referred to as S. Doc. No. 248][39]; *id.*, at 190, 191, 301, 310, 349, 422.[40] "Intense consideration" of administrative procedure and the judicial review thereof consumed a period of more than ten years, with a plethora of bills being submitted and providing for, *inter alia*, varying forms of judicial review. S. Doc. No. 248, at 187; *id.*, at 63-66, 131-183, 298-302, 351-352.

The highlights of the enactment of the APA were: passage in 1940 of the Walter-Logan bill (H.R. 6324, 76th

39. The document contains the legislative history of the APA subsequent to the filing of S. 7, 79th Cong., 1st Sess., on January 6, 1945. It contains: the text of the Act as passed; the Senate Judiciary Committee Print of June 1945, 79th Cong., 1st Sess.; Hearings Before The Committee On The Judiciary Of The House of Representati s On The Subject of Administrative Procedure, 79th Cong., 1st Sess., ser. no. 19 (1945); S. Rep. No. 752, 79th Cong., 1st Sess. (1945); H.R. Rep. No. 1980, 79th Cong., 2d Sess. (1946); and the proceedings in the Senate on March 12 and May 27, 1946, and in the House of Representatives on May 24 and 25, 1946. Citations concerning the APA's legislative history subsequent to January 1945, are to this document, in lieu of citation to individual Documents, Reports and the Congressional Record.

40. The extraordinary nature of the study and preparation given the Act is testified to by the following statement from the House Report, S. Doc. 248, at 241:

> "For more than 10 years this legislation has been under consideration. Certainly no measure of like character has had the painstaking and detailed study and drafting."



Cong., 1st Sess. (1939)), and its veto by President Roosevelt (H.R. Doc. No. 986, 76th Cong., 3d Sess. (1940)); the presentation shortly thereafter by a committee appointed by the Attorney General of a comprehensive report ("Administrative Procedure in Government Agencies," S. Doc. No. 8, 77th Cong., 1st Sess. (1941) [hereinafter referred to as S. Doc. No. 8]), containing majority and minority reports and proposed bills, all of which were closely studied by Congress (see S. Doc. No. 248, at 190, 192-193, 245-246); and following delay caused by World War II, the unanimous enactment of the APA in 1946, 60 Stat. 237. See S. Doc. No. 248, at 344, 406, 423; 92 Cong. Rec. 2167, 5668, 5791 (1946).

The Act was passed to satisfy "widespread demand." S. Doc. No. 248, at 187. A need and purpose must necessarily be demonstrated to secure the passage of any bill. This notwithstanding, Congress expressed an extraordinary need and concern for the legislation that culminated in the unanimous approval of the APA. Over a period of many years Congress voiced alarm at the tremendous growth of the Federal bureaucracy, and the concomitant flagrant abuse of agency authority. *E.g.*, 86 Cong. Rec. 4544, 4591, 13669, 13812 (1940); S. Doc. No. 248, at 382, 383. Buffeted by example after example of "absolutism,"[41] of agencies engaging in "autocratic, arbitrary, unreasonable and illegal exercises of authority,"[42] and of agencies abusing the discretion vested in them,[43] intensive Congressional efforts of more than a decade to rectify the intolerable situation were rewarded with adoption of the APA. The fundamental purpose of the Act was to protect against bureaucratic ty-

41. *E.g.*, 86 Cong. Rec. 4539, 4724, 13662, 13669 (1940).

42. *Id.*, at 4591; *e.g.*, id., at 4601, 13670, 13676.

43. *E.g.*, 84 Cong. Rec. 7076 (1939); 86 Cong. Rec. 4544, 13668 (1940).

ranny; to insure due process of law; to provide individuals with a day in court in order to provide them a means to assert their rights; to restore interpretation of law to the courts; to end the aforementioned administrative absolutism, abuses of discretion, and utilization of "autocratic, arbitrary, unreasonable and illegal" means; and to satisfy the crying need for uniformity both in agency proceedings and in judicial review of such proceedings.[44] In sum, the salutary purpose of the Act was to insure "government of law, rather than of men." S. Doc. No. 248, at 381; 86 Cong. Rec. 4539, 4650, 13811, 13813 (1940).

To accomplish this purpose, the APA was drafted to provide "an outline of minimum basic essentials," S. Doc. No. 248, at 193. It was "designed to afford parties affected by administrative powers a means of knowing what their rights are and how they may be protected," *ibid.* See also, *id.*, at 250. Cognizant of both the "widespread demand" and need for a clear statement of the boundaries of judicial review (see, *e.g.*, S. Doc. No. 8, at 210-212; S. Doc. No. 248, at 187), Congress in § 10 of the Act, 5 U.S.C. § 706, set "forth a simplified statement of judicial review designed to afford a remedy for every legal wrong." S. Doc. No. 248, at 193.

Prior to enactment, the question was *not* whether the APA would pass, *but solely* how it should be drafted. See *id.*, at 352. The content was what concerned Congress. In carefully and painstakingly drafting the Act, Congress looked to prior bills and studies (particularly the Walter-

44. *E.g.*, S. Rep. No. 442, 76th Cong., 1st Sess. 5, 10, 14 (1939); H.R. Rep. No. 1149, 76th Cong., 1st Sess. 4-5, 8 (1939); 84 Cong. Rec. 7076, 7077 (1940); 86 Cong. Rec. 4537, 4538, 4539, 4544, 4591, 4593, 4601, 4646, 4647, 4648, 4650, 4672, 4673, 4724, 4736, 4737, 13662, 13663, 13665, 13667, 13668, 13669, 13670, 13672, 13673, 13675, 13676-13677, 13678, 13808, 13811, 13812, 13813, 13814, 13815 (1940); S. Doc. No. 248, at 193, 304, 312, 313, 318, 326, 327, 351, 373, 380, 382, 383, 384, 385.



Logan bill, and the reports of the Attorney General's Committee), *id.*, at 187-193, 241-250. The final text was the result of extraordinary discussion, analysis and revision.[45]

After the bill passed the Senate, further revision based upon analysis of "many suggested changes and alternative proposals" was made by the House Judiciary Committee. *Id.*, at 250.

The Walter-Logan bill, as passed, contained no provision comparable to the arbitrary or capricious standard of the APA.[46] The only segment even impliedly approaching the

45. The Senate and House Reports document the careful drafting of the Act. The bill eventually enacted, S. 7, 79th Cong., 1st Sess. (1945), when introduced was a "revised and simplified" version of S. 2030, 78th Cong., 2d Sess. (1944). S. Doc. No. 248, at 190. S. 2030 was "[b]ased upon the studies and hearings in connection with prior bills on the subject" and was the result of "several years of consultation with interested parties in and out of official positions." *Ibid.* Following the introduction of S. 7 (and of the companion House bill, H.R. 1203, 79th Cong., 1st Sess. (1945)), "[a]n entire year . . . [was] spent alone in redrafting." *Id.*, at 246.

Such redrafting was initiated when, upon request by the chairmen of both Judiciary Committees, views and suggestions for improving the bill were submitted by governmental agencies and private parties. With the assistance of the Justice Department and private parties, these submittals were analyzed and the text of the bill revised. A Committee Print was issued by the Senate Judiciary Committee in May, 1945, comparing the original and revised text. *Id.*, at 248; see *id.*, at 11.

Following submission of the revised text to agencies, further comments were received in response. Hearings were held by the House Judiciary Committee on H.R. 1203 and other bills on the subject in June 1945; and in late June 1945 another Committee Print was issued by the Senate Committee following analysis of the latest suggestions and of the hearings then in progress. Following three more months of discussion with public and private organizations and analysis, a further revised S. 7 was reported out of committee in October 1945. *Id.*, at 248-249; see also, *id.*, at 190-191.

46. As reported out of Committee and passed by the House, § 5 of the Walter-Logan bill provided for reversal of an agency "decision" if, *inter alia*, "the findings of fact [were] clearly erroneous; *or* . . . the findings of fact [were] not supported by substantial evidence; *or* . . . the decision [was] not supported by the findings of fact; *or* . . . the decision [was] otherwise contrary to law." 86 Cong. Rec. 4669-4671, 4743 (1940) (emphasis added).

*(Continued on following page)*

arbitrary or capricious standard appeared in § 5, wherein reversal of an agency decision was required if it was "not supported by the findings of fact."

As compared to the Walter-Logan bill, the APA was drafted to contain "more comprehensive provisions for a judicial review for the redress of any legal wrong." S. Doc. No. 248, at 192, 244. It follows that one of the APA's "more comprehensive provisions" was the arbitrary or capricious standard.

The administrative procedure bill proposed by the majority report of the Attorney General's Committee contained no definitive scope of review. See S. Doc. No. 8, at 92, 191-202, 209. The minority, however, recognized the pressing need of "statutory direction" for judicial review, *id.*, at 209. Its proposed bill contained a provision providing for review of "findings, conclusions, and decisions in any case . . . regardless of the form of the review proceeding," and for consideration of, *inter alia*, "administrative action *otherwise* arbitrary or capricious." *Id.*, at 246-247 (emphasis added).

In comparison to the reports of the Attorney General's Committee, the Act was written to be "more complete than the solution favored by the majority . . . but less prolix and more definite than the minority proposed." S. Doc. No. 248, at 192. Thus, the arbitrary or capricious standard in the APA was not intended to have the indefinite and redundant role assigned the "otherwise arbitrary and capricious" provision in the bill proposed by the minority.

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**Footnote Continued—**

**The Senate Judiciary Committee amended § 5 by deleting the "clearly erroneous" and "contrary to law" standards. The deletions were ratified by both the Senate and the House. 86 Cong. Rec. 13676, 13746, 13748, 13807-13808, 13816 (1940).**



The arbitrary or capricious provision in the bill as drafted (S. 7, 79th Cong., 1st Sess. (1945)), as reported out of committee (S. Doc. No. 248, at 222), and as passed by the Senate, included reversal for agency abuse of discretion solely by implication.[47] "To make it clear that . . . [the bill] preserve[d] judicial review of abuses of discretion," the "abuse of discretion" ground was written into the bill by the House Judiciary Committee. S. Doc. 248, at 289, n. 22.

Congress foresaw an active, substantive role for the courts. The Senate Report admonished that the provisions of the Act "require[d] vigilant attention to assure their proper operation." *Id.*, at 217. Noting that the Act was generally "one laying down definitions and stating limitations," it was further recognized that "the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is conferred upon the courts in the final analysis." *Ibid.*

In promulgating the six separate standards for review in § 10(e) of the Act, including the arbitrary or capricious standard, as the tools for courts to use in such "vigilant" enforcement, Congress made no exception for the use of those six review provisions. This conclusion is compelled by a mere reading of the plain, clear, and separate standards set forth in § 10(e).

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**47. Section 10 of the Act provides for judicial review of agency action except where precluded by statute or where "committed to agency discretion." On the floor of the Senate, Senator Donnell noted that as the bill was then written, some might feel that there could be no judicial review for abuse of discretion. The sponsor of the bill, Senator McCarran, assured the Senate that unauthorized, capricious, or arbitrary employment of discretion was subject to review. S. Doc. 248, at 310-311. As noted in the text *infra*, reversal for "abuse of discretion" was written into the bill by the House Judiciary Committee.**

Moreover, the Reports of both the Senate and House Committees speak of "the *several* categories of questions of law" listed in the subsection. S. Doc. No. 248, at 214 and 278 (emphasis added). In addition, the desired application and enforcement of all six separate standards as "plainly" and "clearly" written was made quite clear both in the Reports accompanying the bill and on the floor of Congress.[48]

Looking to the purpose of the Act and to the extraordinary, meticulous, painstaking, and careful preparation given it, it is obvious that Congress intended the arbitrary or capricious standard to serve a definite, separate, viable function in the overall scheme of judicial review. There is not the faintest whisper in the legislative history that the arbitrary or capricious standard was to have either a restricted function or to operate only with respect to certain matters. On the contrary, Congress specifically and expressly sought to cure that forbidden agency action falling within the boundaries of the standard. For example, on the floor of the Senate, Senator McCarran emphasized that "the thought uppermost in presenting this bill is that where an agency

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48. For example, the Senate Report, S. Doc. No. 248, at 193, stated that "[t]he jurisdiction of the courts is clearly stated." And the House Report provided that "[t]he bill is meant to be operative 'across the board' in accordance with its terms, or not at all." *Id.*, at 250.

In discussing the six standards of § 10 of the bill in the Senate, Senator McCarran stated courts were to set aside action "found to be arbitrary *or* contrary to the Constitution *or* contrary to the statutes *or* short of statutory right," etc. *Id.*, at 323-324 (emphasis added). On the floor of the House of Representatives, Congressman Walter showed the standards to be separate, id., at 370, as did Congressman Gwynne, id., at 375.

Senator McCarran stated that the bill had been given "meticulous" study, so that its terms would be construed "in such a way that there may be no divergence of views when we get through." *Id.*, at 310. And Congressman Hobbs "pray[ed] that the plain meaning of . . . [the bill would] be so correctly interpreted as to effectuate its high purpose." *Id.*, at 382. See also, id., at 381 (Hobbs).



without authority or by caprice makes a decision, then it is subject to review." S. Doc. No. 248, at 310. Moreover, Congressman Walter, long a proponent of the bill, stated that "the function of an . . . agency is clearly not to decide arbitrarily or to act contrary to the evidence or upon surmise or suspicion or untenable inference." *Id.*, at 365. Stating that agencies must reach "just" decisions upon the whole record, he noted that agencies "do not have authority in any case to act blindly or arbitrarily." *Ibid.*

Nor was the need for, or purpose of, the arbitrary or capricious standard ever questioned or challenged. As heretofore shown, Congress instead bolstered the standard as originally written by adding the "abuse of discretion" ground for reversal. Had Congress intended the arbitrary or capricious standard to have the narrow, "generic" function ascribed to it by the appellants, Congress would clearly have done so. The extraordinarily careful study and meticulous drafting, and the length of preparation prohibit any other conclusion.

There is no specific explanation of the arbitrary or capricious standard in the reports of the Senate and House Judiciary Committees, save for the aforementioned reason given in the House Report for why the term "abuse of discretion" was added to the arbitrary or capricious standard. But on the floor of Congress, in the only critique of the standard, it was praised by Congressman Springer, a member of the Judiciary Committee, as "a most potent statement and a fair and equitable provision. . . . [I]n those cases where . . . decisions are found to be arbitrary, where the decision is found to be capricious or an abuse of discretion or otherwise not in accordance with the law, the decision can be set aside. That is certainly fair, that is certainly

equitable, and that is certainly based upon a sound philosophy." S. Doc. No. 248, at 377.[49]

Included in the scope of judicial review prior to statutory regulation of such review, and expressly noted by Congress, was the rule that, among other grounds, an agency decision could be set aside if it was either "arbitrary or capricious or unsupported by evidence." S. Doc. No. 145, 76th Cong., 3d Sess. 19 (1940). The employment of the arbitrary or capricious standard in the APA was therefore simply the intentional restatement by Congress of one of the accepted standards of judicial review of agency action, as understood by Congress; and the other standards set forth in 5 U.S.C. § 706 were generally felt by Congress to be those that were employed for judicial review prior to the passage of the Act. S. Doc. No. 248, at 39, 86, 224, 230, 289, at n. 22, 415. But Congress clearly intended one fundamental change in the practice that had been utilized by some courts. Whereas, some courts in reviewing agency action had not looked to the whole record, Congress prescribed that review *must* be based upon the entire record, or those portions cited to the court. *Id.*, at 216-217, 279. This important change was expressly recognized on the floor of Congress. *Id.*, at 248, 280, 321-322, 375, 376.

Congress did not provide that a court upon reviewing the record could reverse only if a decision was "unsupported by substantial evidence," or *only* if a decision was *both* unsupported by substantial evidence *and* was arbitrary or capricious. Congress plainly provided that a decision could be reversed if it was, among other things, ar-

49. As discussed in n. 47, *supra*, the standard was indirectly discussed by Senator McCarran. Prior to the addition of "abuse of discretion" to the arbitrary or capricious standard, he assured the Senate that discretion employed in an unauthorized, capricious or arbitrary manner was subject to review. S. Doc. No. 248, at 310-311.



bitrary, *or* capricious, *or* an abuse of discretion, *or* otherwise not in accordance with law, *or* unsupported by substantial evidence. Congress clearly intended that a decision be reversed for any one of several reasons. The Senate and the House Reports for the APA, in discussing the scope of review for reversal, *vel non*, of "agency action, findings and conclusions," provided that the terms " 'finding' and 'conclusion' also mean failure to find or conclude as the law and record may require. . . ." S. Doc. No. 248, at 214, 278. They also provided that "[t]he requirement of review upon the 'whole record' means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case." *Id.*, at 248, 280.

Without question, a "failure to find or conclude as the law and the record may require" is arbitrary or capricious action, mandating reversal; as is looking "only to the case presented by one party." These are the types of agency errors found by the reviewing court to constitute arbitrary and capricious action. The court also found abuse of discretion. In reversing the Division, the District Court was conscientiously complying with the express provisions of the APA and the clear intent of Congress.

## D

### The Reviewing Court Did Not Weigh the Evidence

The Government contends that the reviewing court "set aside the Commission's decision because it believed the evidence presented by appellees was entitled to greater weight than the Commission accorded to it" (Brief 13). It also contends that the District Court "invalidated the Commission's order, notwithstanding the abundance of evidence supporting the Commission's findings, because the court

disagreed with the Commission's evaluation of some of the contrary evidence" (*Id.*, at 15). The private appellants contend (Brief 16) that the District Court reviewed *"de novo"* the decision of the Division,[50] and that the court's decision "requires the Commission to accord equal weight" to all evidence presented (*Id.*, at 42).[51]

Appellants' contentions do not correctly describe either the court's action, or the import of its decision. The court went no further than concluding, as a matter of law, that the Division's treatment of the evidence was not proper. In holding that "there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants" (App. 1311), *the court was not itself weighing such evidence*. If this constitutes "weighing the evidence," as

50. Private appellants use the term "de novo review." The term is inapposite. It appears in the Bank Merger Act of 1964 where the term "review de novo" was used to reach the same result as "trial de novo." *United States* v. *First City National Bank*, 386 U.S. 361, 368 (1967). In *Overton*, the Court stated that agency action subject to § 706(2)(F) requires the reviewing court "to engage in a de novo review of the action." There, the Court was again using the term to apply to proceedings subject to "trial de novo by the reviewing court." 401 U.S., at 414.

51. The private appellants also make the pro forma argument that "the District Court substituted the clearly erroneous rule for the substantial evidence rule" (Brief 21). The contention has no application to this case. This "clearly erroneous rule" finds its basis in Rule 52(a) of F.R.C.P., which provides that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395 (1948). The reviewing court recognized its limited scope of review and acted accordingly. The reasons presented to show that the District Court did not "weigh" the evidence also compellingly demonstrate that the court did not utilize a "clearly erroneous" rule. The court was solely concerned with § 706 questions of law. The court did not set aside findings of fact made by the Division. The court found, as a matter of law, that the conclusions and action of the agency based upon the agency's own findings of fact were improper.



charged by appellants, judicial review would be a futile formality.

In performing its function of review, the District Court was called upon to decide whether the Division acted arbitrarily or capriciously, and therefore without rational basis, in applying different standards in its treatment of the evidence—a far cry from "weighing the evidence" or "de novo" review of the issues presented. The court found, as a matter of law, that the Division had applied a discriminatory double standard in its treatment of protestants' evidence as contrasted to its treatment of applicants' evidence, and specifically enumerated those errors of law. The court summarized the Division's error (App. 1319):

> ". . . In applying different standards to evidence presented by applicants as contrasted with evidence presented by protestants, and in some instances to the same evidence, the report sounds more in advocacy than in impartial adjudication. . . ."

Stated differently, such action on the part of the Commission "was an exercise of arbitrary power, at variance with 'the rudiments of fair play' long known . . . to our law. The Fourteenth Amendment condemns such methods and defeats them." *West Ohio Gas Co.* v. *Public Utilities Comm'n*, 294 U.S. 63, 71 (1935).[52]

Set forth in Appendix II hereto are findings of the District Court of arbitrary or capricious action by the Division in its treatment of the evidence. The mere recital of these examples demonstrates that the District Court did not engage in "weighing of the evidence" or "de novo" review of the issues presented. Clearly, they demonstrate er-

52. Here, the reviewing court concluded that "[t]he basic rudiments of fairness were simply not applied" (App. 1314).

rors of law. A brief description of some of these errors are set forth below:

1. Protestants' Transit-Time Studies v. Those Of Applicants

*A. The Division Report*: The Division concluded that the protestants' transit-time studies "do not present as valid a picture as those introduced by those witnesses supporting the applications" on the stated grounds "(1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers . . . ." (App. 129).

B. *The Court's Findings*: The District Court found "[t]here is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments . . . ." (App. 1310). The court also found "[t]he conclusion that these studies are entitled to little weight because they 'relate to short periods of time' is completely arbitrary" because "[m]any covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious action" (App. 1311).

The District Court found that the rejection by the Division of the protestants' traffic studies "on



the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis" because the Commission "made specific findings in favor of applicants based on applicants' studies that covered similar or later periods of time," and concluded that "[a]gain, one standard was applied to applicants and a different standard to protestants" (App. 1311).

The District Court found that the Division's "condemnation of protestants' studies on the ground that some 'cover traffic for specified shippers' is particularly unwarranted" because the "applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses" and the protestants "presented shipping documents taken from their files evidencing specific service rendered *for those same shippers*" (App. 1311) (emphasis added).

The court concluded that "there is no rational basis" for the Division to consider "such evidence presented by applicants and its refusal to consider such evidence presented by protestants" (App. 1311).[53]

2. Applicants' Transit-Time Studies—Parts Favorable To Applicants v. Parts Unfavorable To Applicants

*A. The Division Report*: At one point in its report the Division made critical findings favorable

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53. Private appellants charge the court with improperly finding that the Division compared protestants' studies with those "presented by Applicants," saying that the comparison was made only with the "studies of supporting shippers" (Brief 40). This is a frivolous play on words. All "studies of supporting shippers" were "presented by Applicants" since applicants sponsored the witnesses who presented the studies.

to Bowman, based upon Bowman's service exhibit (App. 116); but at a subsequent point the Division refused to consider those parts of the identical exhibit unfavorable to Bowman (App. 157).

*B. The Court's Findings*: The District Court found that "Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals," and that the Division "accepted applicants' evidence as substantiating applicants' ability to perform as proposed" (App. 1295). It also found that protestants pointed out to the Division that the Bowman service exhibit showed that in many instances Bowman "delivered its traffic on time only 55% of the time" and that "Johnson's on-time performance ranged from 22.5% to 58.5%," and that "[t]hese facts were ignored by the Division" (App. 1296-1297).

The court concluded that "[w]hile predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the same exhibits reflecting unfavorably upon applicants," and that "the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis" (App. 1312-1313).

3. Supporting Shipper Service Exhibits—Parts Favorable To Applicants v. Parts Unfavorable To Applicants

*A. The Division Report*: The Division made essential findings favorable to applicants based upon shipper-sponsored traffic studies (App. 126). No mention was made, however, of the composite summaries of such exhibits which demonstrated that, viewed in their entirety, they supported protestants' rather than applicants' position (Exhibits 1839, 1840, 1841, 1942, summarized in Appellees' Initial Brief in District Court, at 123-127).



*B. The Court's Findings*: The court concluded that this action constituted "arbitrary treatment" by the Division in that it "predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service" (App. 1313).

4. Service Restrictions By Applicants v. Service Restrictions By Protestants

*A. The Division Report*: The Division condemned protestant carriers for imposing service restrictions in published tariffs (App. 126-127). Yet, many similar, and sometimes identical, restrictions were maintained at the same time by applicants Bowman, Johnson, and Red Ball.[54] Although condemning protestants for the described types of service restrictions, the Division's report did not even mention the same or similar type service restrictions maintained by applicants.

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54. These restrictions were contained in official tariffs filed with the Commission, and were called to the Division's attention by protestants in Ex. 1664, Apps. 40, 44 and 46. A summary appears in appellees' initial brief in the District Court, at 131-133.

*B. The Court's Finding*: The District Court found that the Division's report "specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman, and Johnson" (App. 1297). The court concluded: "Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants." (App. 1313).

5. "Official Notice" Of Facts Detrimental To Protestants v. Refusal Of "Official Notice" Of Facts Detrimental To Applicants In The Same Publication

*A. The Division Report*: On its own motion, the Division took official notice of the Fall 1971 Edition of the American Motor Carrier Directory for the purpose of showing that protestant Cole-Dixie had closed one of its terminals since the hearing (App. 151, n. 42).

In selecting Red Ball as one of the applicants to which authority was granted, the Division relied heavily upon the fact that Red Ball maintained 92 terminals (App. 132).

Although requested to do so by protestants, the Division refused to take official notice of the same edition of the same publication which showed that Red Ball had closed 35 of its 92 terminals.

*B. The Court's Findings*: The court found that "[o]n its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing.



At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the same publication reflecting unfavorably upon an applicant. . . . The basic rudiments of fairness were simply not applied" (App. 1298, 1314).

The above examples illustrate the court's findings and conclusions.[55] Clearly they demonstrate that the court did not "weigh the evidence." The court found, as a matter of law, that the Division's action, findings and conclusions were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

## III

### Other Deficiencies in the Division's Decision

The reviewing court noted other substantial deficiencies in the Division's decision, not previously discussed. They include the following:

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55. They are by no means exhaustive. For example: "Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division" (App. 1313-1314).

## A

### The Court Properly Held That the Commission Failed to Give Consideration to the Total Carrier Service Available at the Time of Its Decision

One of the most egregious errors in the Division's report is the absence of any evaluation of the total carrier service available at the time of its decision. The fundamental issue involved the adequacy of existing service. The applications were filed in 1965. The hearing ended in 1967. The Division served its report in early 1972, and its final two-to-one vote approving the applications was dated September 1, 1972 (App. 101, 363).

In its report the Division ruled that three additional carriers were needed to supplement the existing service and, further, that *more than three would be detrimental to the public interest* (App. 131). At no point, however, did the Division make any analysis or evaluation of the total service available at the time of its decision (App. 1299, 1314). The applicants based their proposals primarily on the proposition that there was not a sufficient quantity of *single*-line service available and that the abundant *joint*-line service available could not adequately meet the needs of the public due to the inherent disadvantages of joint-line operations.[56] The Division's only evaluation of the total service available appears in its summary of evidence presented by Johnson: "comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth." This finding was followed immediately by a correlative finding: "In this respect it is noted . . . that on the whole the population . . . has increased substantially between 1960 and 1970" (App. 122-123).

56. "Joint-line" service embraces all types of movements where two or more carriers are involved, including the widely prevalent practice by which carriers exchange trailers in order that shipments may move in through, coordinated service without physical handling en route.



It is significant that this, the only evaluation of total service available, was made for the purpose of testing the adequacy of such service "to meet the demonstrated growth" in the involved areas. The problem with this is that the Division's conclusion that "comparatively there is a paucity of single-line service available" was based upon a study made prior to the start of the hearing in March of 1966.[57] This *1966* status was then used to determine its adequacy "to meet the demonstrated growth" that had taken place through *1970*. Ignored were the tremendous changes in available service that resulted from post-hearing grants of new authority, mergers, and consolidations approved by the Commission.[58]

Contrasting sharply with the Division's treatment of this subject is the examiners' detailed analysis of service available at the time their report was issued in 1969 and their evaluation that a "multiplicity" of such service existed (App. 871-872, 883-884).

Following issuance of the examiners' report, additional changes occurred, but the Division consistently ignored them. They also ignored the changes considered in the examiners' evaluation and, instead, concluded that the ap-

57. Exhibit 62; summarized, in part, in appellees' initial brief in the District Court, at 141-145.

58. These comments consider only the expansion in *carriers* available and do not give effect to each carrier's increase in vehicles operated. For example, in the lower court appellant Lorch supplied statistics showing that during 1960-1971 for-hire truck registrations in the southwest increased by 70 percent and in the southern area by 88 percent (Lorch Brief 427). The examiners recognized that existing carriers "have increased their facilities and services with the growing needs of shippers in the areas they serve" (App. 889).

plications should be granted because of the "paucity" of service that was available in early 1966.

The significance of these changes is demonstrated by the following examples:

SINGLE-LINE[59] SERVICE AVAILABLE

| Between Atlanta and | At time of Hearing | At time of Examiners' Report | At time of Division's Report |
|---|---|---|---|
| Dallas | 3 | 7 | 13 |
| Houston | 3 | 7 | 11 |
| Jackson | 3 | 6 | 8 |
| Kansas City | 5 | 5 | 10 |
| Baton Rouge | 1 | (Not Shown) | 7 |

After recognizing its duty to give consideration to such changes and the propriety of taking official notice of its records reflecting such changes, the Division stated that "accordingly" changes involving *protestants* "have been noted in appendix G" and changes involving *other carriers* "although not specified in detail in this report, have nevertheless been accorded full and careful consideration in our present determination"[60] (App. 106). These recitals appear in a section entitled "Preliminary Matters," but in its "Discussion and Conclusions," the Division *made no evaluation of the total service then available*. The reviewing court therefore noted that the Division's preliminary recital that it had given "full and careful consideration" to these matters "cannot be accepted as a substitute for adequate findings." In view of the Division's refusal to evaluate the total service available at the time of its decision, the court concluded that it "cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public" (App. 1314).

59. This comparision does not include the multiplicity of *joint*-line motor and rail service available. A more comprehensive analysis appears on pages 142-145 of appellees' intitial brief before the District Court.

60. The Division's assertion that facts not placed in evidence nor made the subject of official notice had "nevertheless been accorded full and careful consideration" constitutes legal error. "Facts conceivably known to the Commission, but not put in evidence, will not support an order." *Baltimore & O.R. Co.* v. *United States* ("The Chicago Junction Case"), 264 U.S. 258, 263 (1924). "All parties must be fully apprised of the evidence submitted or to be considered. . . ." *ICC* v. *Louisville & N.R. Co.*, 227 U.S. 88, 93 (1913).



Appellants cite fragmented references in the report, and aver that the Division did, in fact, consider post-hearing changes (Government Brief 28, 34-35; Priv. App. Brief 40, 57-58). Their citations identify specific references to post-hearing changes appearing (a) in the body of the report, (b) in an appendix relating to protestants, and (c) in an appendix summarizing the pleadings.

The references to the *pleadings* do not, of course, constitute findings of fact.[61]

The references to changes involving protestants, set forth in the appendix, were not mentioned, much less considered, in the body of the report.[62]

The references in the report itself identify post-hearing expansions involving *applicants*—facts favorable to the

61. Justice Cardozo pointed to the impropriety of using averments as a substitute for findings, stating: ". . . they are not a finding at all, but a summary of the grounds of protest, an outline of the pleadings, or what amounts to the pleadings, before an administrative body." *Mississippi Valley Barge Line* v. *United States*, 292 U.S. 282, 289 (1934).

62. "At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision" (App. 1299).

applicants. Only one such reference mentions protestants, that being a completely unwarranted conclusion that the post-hearing merger of protestants United and Campbell resulted in "rendering the issue as to the vulnerability of the former's operations moot"—a conclusion favorable to applicants (App. 157, n. 44). The Commission ignored the true impact of the United-Campbell merger which changed the joint-line service of those protestants into a new single-line service between Atlanta and most of the key cities involved.[63]

It is not possible to read the Division's report and discern therefrom the fact that the Atlanta-Dallas single-line carriers had increased from 3 at the time of the hearing to 13 at the time of the decision. If the Division, in the exercise of its expertise, deemed 3 (in 1966) to constitute a "paucity," it should have explained why it did not agree with the examiners that 7 (in 1969) constituted a "multiplicity," or why 13 (in 1971) were not sufficient. When the Division concluded that 3 more were needed, and that 4 more would be excessive, the report would indicate that it was thereby increasing the total from 3 to 6, whereas, in fact, it was authorizing an increase from 13 to 16.

Since this involved such a basic issue, it is difficult to understand how such an obvious error could be made. Per-

63. In discussing a different point, the Government also refers to a post-hearing change in appellee Braswell's operations, quoting from a finding in the report that Braswell's "authority in Alabama is limited to only the major points of Birmingham and Montgomery" (Brief 25-26, n. 11). Here, Government counsel inadvertently engages in the identical type of "advocacy" followed by the Division. This *erroneous* finding, relied upon by the Division in its report (App. 152), is in direct contradiction of the more detailed finding buried in the appendix devoted to protestants. There, the Division *adopted* the examiners' *correct* finding that Braswell's new authority embraces *all points* on two routes completely traversing Alabama, with service at "141 points in Mississippi, Alabama and Georgia" (App. 354, n. 17; 1265-1266, n. 10).



haps undue reliance was placed upon applicants' briefs and pleadings. In their *final brief* before the Commission applicants argued that the case "can and should be decided on the basis of the record as it now stands" and that since "there is no evidence on this record" concerning operations pursuant to post-hearing certificates and mergers, such changes should be disregarded.[64] At the same time, applicants successfully opposed appellees' efforts to reopen the proceedings for proof of service rendered under new authority.[65]

Also, in its final brief before the Commission, Johnson continued to assert the position it assumed at the outset of the hearing that "Ryder and Roadway are the only single-line Johnson protestants having significant service between points Johnson proposes to serve and points in its present territory. . . ." Indeed, in its Jurisdictional Statement, Johnson quoted excerpts from its exceptions before the Commission that:

> "The only protesting carriers having significant single-line service in the areas presently and proposed to be served by Johnson are Ryder and Roadway" (J. S. Johnson, A-4).

Certainly, Johnson would not have this Court gain the erroneous impression that Ryder and Roadway are the only "protesting carriers having significant single-line service in

64. See, *e.g.*, Johnson's Reply to Petitions for Reconsideration, at 63.

65. See, *e.g.*, Replies to Petitions for Further Hearings filed by Bowman, dated April 30, 1969 and April 1, 1972, by Johnson, dated April 21, 1969, and by Red Ball, dated April 18, 1969. The examiners and the Division overruled appellees' repeated efforts to have the proceeding reopened for proof of changes in service available. Both reports explained that reopening was not necessary since official notice would be taken of such changes (App. 898, 106).

the areas presently and proposed to be served by Johnson."[66] These applicants propose, for example, to duplicate the present service between Atlanta and Dallas, Houston, Jackson and Baton Rouge, and thereby become the 16th, 14th, 11th and 10th single-line carriers, respectively, between such points.[67]

The conclusion is inescapable that the two-to-one vote of the Division in this case *did not result from the exercise of an informed, impartial judgment applied to facts placed in evidence or officially noted!*

B

**The Court Correctly Found That the Commission Did Not Give Proper Consideration to the Adverse Effect of the Grants upon Existing Service**

The Court properly noted that "[t]he Examiners concluded . . . that approval of *any* of the applications would result in a *deterioration* rather than an improvement of existing carrier service, contrary to the public interest" (App. 1280) (emphasis added). The Division, on the other hand, found that "protestants have not shown that they would be seriously adversely affected by such grants" (App. 157). The examiners' findings of fact relating to

66. Johnson's reference embraces only "*protesting* carriers," but protestants to the Johnson application include 7 *other than* "Ryder and Roadway" that provide "significant single-line service," for example, between Atlanta (presently served by Johnson) and Dallas (proposed to be served by Johnson) (App. 324, 329, 332, 338, 341, 342, 354). Other "protesting carriers" providing similar service between such points also opposed the Bowman and Red Ball proposals to duplicate such service (App. 321, 326, 346).

67. Private appellants complain (Brief 57, 58) because certain *appellees* "received additional common carrier authority during the pendency of this proceeding as late as 1970," but the Commission should not be concerned with who received the authority as long as the public is served.



this issue were expressly adopted by the Division[68]; accordingly, the Division and the examiners relied upon identical facts to reach opposite conclusions. Based upon its study of the two reports, the court found that the Division's "conclusion is directly contrary to the Division's findings of fact . . ." (App. 1316).

In challenging this finding by the reviewing court, the private appellants base their argument on a serious misrepresentation of the facts. They state that "the examiners . . . found such adverse effect only if all 10 applications were granted" (Brief 48). The facts are that the examiners *repeatedly* found that approval of "*any*" or "*any one*" of the applications would cause deterioration in existing service, thereby adversely affecting the public interest (App. 889-892). Since this error constitutes the only basis for such appellants' criticism of this finding by the reviewing court, their argument merits no further discussion.

The Government makes the same error (Brief 5). It also points to the Division's finding that "only one carrier, Holloway, had shown that its operations may be seriously affected"[69] (Brief 33). The Government argues that the Division's determination of this issue should not be disturbed since the only evidence detracting from such determination was the Commission's finding "that a loss of any of Roadway's eastbound traffic from Texas origins would result in a further imbalance in its operations (App. 345) and that a diversion of freight from Campbell's terminal points would result in deterioration of Campbell's ser-

68. These findings appear in Appendix D to the examiners' report (App. 1191-1269), brought forward verbatim in the Division's report as Appendix G (App. 319-358).

69. The examiners used appellees Holloway and Red Line as examples of small carriers that would be "put out of business" if only *one* of the applications were granted (App. 889-890).

vice at smaller points in Mississippi (App. 339)..." (*Ibid.*). There is simply no way to explain why the Government, in acknowledging this conflict between the Division's findings and its conclusions, referred *only* to the findings as to Roadway and Campbell. *Almost identical findings* were made by the Division as to Alamo (App. 323), Missouri Pacific (App. 328), Gordons (App. 330), Mercury Motors (App. 332), West (App. 335), Deaton (App. 335), Floyd & Beasley (App. 376), Pilot (App. 338), Mason and Dixon (App. 338), East Texas (App. 342), Transcon (App. 343), Herrin (App. 346), ET&WNC (App. 347) and United (App. 348).[70] Specific examples of some of these findings are quoted in Appendix III hereto.

Since *none* of these findings are mentioned in the Division's discussion of the case, and since they are in direct conflict with the Division's conclusion, the reviewing court correctly found, as a matter of law, that the Division's conclusion was not lawful since it was "directly contrary to the Division's findings of fact" (App. 1316).

## IV

## The Reviewing Court's Decision Is Not Deficient in Any Other Respect

Although appellants criticize various statements appearing in the reviewing court's opinion, such criticisms are not well founded. In many respects they illustrate the

70. Similar findings were also made as to ICX (App. 322), SW Transp. (App. 322), Central (App. 323), Red Arrow (App. 323-324), T.I.M.E.-DC (App. 763-764), Yellow [Watson-Wilson] (App. 326), Trans-Cold (App. 327-328), Red Line (App. 328-329), Southern Forwarding (App. 331), Mid-South (App. 331), Wilkerson (App. 331), Atlas (App. 331-332), Akers (App. 332), Mercury Freight (App. 333), Howard Hall (App. 334), Baggett (App. 336), GFA (App. 337), Cole-Dixie (App. 340), Brown (App. 341), Ryder (App. 350) and Braswell (App. 354-356).



probing nature of the court's in-depth study of the record, and in no respect do they establish any deficiency in the court's analysis of the agency action.

The principal criticisms advanced by appellants, not previously discussed, will be considered.

### A

### The Reviewing Court Did Not, As Charged by Appellants, Invalidate the Agency Order Because the Record Was "Stale"

Another misstatement of the record appears on page 54 of the private appellants' brief. They say that the reviewing court invalidated the agency order because "the record was 'stale.'" To support this charge they quote from the court's *October 4, 1973* opinion which did not deal with the merits but with the Government's motion to amend judgment. They erroneously attribute such quotation to the *September 11, 1973* opinion on the merits. In neither opinion was the quoted term "stale" used by the court. More importantly, the court did *not* find that the Division erred in rendering its decision on a "stale" record. *After* finding the agency's action invalid for the many reasons discussed, the court specified the age of the record as one of several reasons why remand for further proceeding on the present record would impede rather than facilitate the Commission's further consideration of the issues of public convenience and necessity.[71] See *infra*, p. 63. *et seq.*

71. See App. 1319, para. 29; App. 809-822.

## B

### Private Appellants Improperly Charge the Reviewing Court with "Mechanically Adopting Verbatim" Appellees' Proposed Findings

In their Jurisdictional Statements the private appellants charged the reviewing court with "mechanically adopting verbatim the proposed findings and conclusions of one set of parties. . . ."[72] Jurisdiction was *not* noted as to this issue; however, such parties continue to argue, both expressly and by innuendo, that the court improperly adopted appellees' proposed findings and conclusions.[73] During oral argument all parties agreed to submit proposed findings of fact and conclusions of law (App. 571, 580, 581, 856, nos. 75, 77).[74] The court considered them all and, in its opinion, adopted appellees' after finding them to be "correct" (App. 1282).[75]

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72. See question no. 1, Jurisdictional Statements of Lorch, at 3-4; Bowman, at 3-4; Johnson, at 3; and Red Ball, at 2-3.

73. *E.g.*, brief of private appellants, at 5, 10, 12, 20, 26, 34, 37-38.

74. This procedure was consistent with local practice; the Federal Rules of Civil Procedure; orders of the court; the guidelines of the Eighth Circuit set forth in *Bradley* v. *Maryland Casualty Co.*, 382 F.2d 415, 423 (1967); and holdings in *United States* v. *Crescent Amusement*, 323 U.S. 173 (1944), and *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964). Although appellees submitted proposed findings and conclusions (App. 697), private appellants submitted fully drafted opinions for signature by the judges (App. 615, 645, 647, 695).

75. The court wrote its own opinion rather than "mechanically adopting verbatim" appellees' proposals, as improperly charged by private appellants. *E.g.*, appellees proposed a single sentence recording the court's refusal to review *Jones* (App. 699); the court wrote over five pages (App. 1320-1325). The court's independent research is reflected by its quotation from, and citation to, cases not quoted or cited in appellees' proposals and by the changes it made in appellees' proposed conclusions (App. 1306-1307, 1308, 1320).



In continuing, improperly, to argue this "issue," private appellants cite *Ayrshire Collieries Corp.* v. *United States*, 331 U.S. 132, 138 (1947), and make the unwarranted assertion that the court below "missed the very essence of the judicial function in this case—the actual adjudication of the issues of law and fact" (Brief 37). *Ayrshire* is inapplicable. It involved the propriety of a decision by two judges of the three-judge panel, one judge being ill and unable to participate. *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 169 (1962), is also inapplicable. The "counsel's discretion" referred to therein was "appellate counsel's *post hoc* rationalization for agency action," and was properly ignored by the Court. All of the other assertions by such appellants relating to this "issue" are fully argued in appellees' Motion to Dismiss and Affirm at 17-22.

## V

### The Reviewing Court Did Not Preclude Further Consideration of the Substantive Merits of Public Convenience and Necessity

The specific allegation of error charged by the Government is that "the District Court erred in precluding further Commission consideration of the substantive merits of the public convenience and necessity issues," followed by the argument that this case "should" have been remanded for further Commission proceedings[76] (Brief 36-42). First, the District Court in no way precluded further Commission consideration. It entered a judgment that "suspended, annulled and set aside" those portions of the Commission's

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76. Significantly, the Government now suggests only that if the reviewing court "believed evidence presented by appellees was entitled to greater weight, the case should have been remanded" (Brief 36). No contention is made that remand should follow where the agency's action was arbitrary or capricious or without rational basis.

order that authorized issuance of Certificates of Public Convenience and Necessity to appellants Bowman, Johnson and Red Ball (App. 739-740). The judgment did no more than enjoin the issuance of the specific certificates authorized in such order. The District Court, in declining to amend such judgment, stated:

> "The court's judgment simply enjoins issuance of the particular certificates authorized in the orders of the Commission held to be invalid . . . . The judgment does not usurp the administrative functions of the Commission. It simply recognizes and holds that the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity. The Commission remains perfectly free to make a new determination of this issue, based upon a new record developed in the light of current facts and conditions. The Commission may direct that this record be developed separately for each of the applicants, or jointly in regard to all of the applicants, as deemed desirable by the Commission. The court has left all of these matters to the Commission and in no way has the court encroached upon the Commission's prerogative to exercise its administrative functions." (364 F. Supp., at 1272; App. 822).

The Commission remains free to consider the substantive issues of public convenience and necessity at any time and, therefore, its delegated powers have been in no way usurped.[77]

77. As the opinion below makes clear, the Commission was never without power to act not inconsistently with the court's jurisdiction. See *American Farm Lines* v. *Black Ball Freight Service*, 397 U.S. 532 (1970).



Secondly, the Government, for the first time, argues that this case "should" have been remanded. Following the District Court's entry of judgment on September 11, 1973, the Government filed its motion for amendment of that judgment "for the reason that such form of judgment is a matter beyond the jurisdiction of the Court in the circumstances presented" (App. 795). The Government's memorandum in support of its motion asserted that the injunction was "beyond the power of the Court" (App. 797); 28 U.S.C. § 2325 is to the contrary. Neither private appellants nor the Government took that position at any time prior to the motion, and the Government does not take that particular position here. The jurisdictional contention argued below has been abandoned, and a new remand question is now being raised. The Government should be foreclosed from raising the new issue here. The question that the proceeding *should* have been remanded is not properly before this Court inasmuch as it was not raised below. See *United States* v. *Arnold Schwinn & Co.*, 388 U.S. 365 (1967); *Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317 (1967).

As to the Government's argument that this case *should* have been remanded, there is no question that it was within the power of the District Court to do so. *American Trucking Ass'ns, Inc.* v. *United States*, 364 U.S. 1 (1960). It is equally clear that remand may be neither necessary nor appropriate. *ICC* v. *Atlantic Coast Line R. Co.*, 383 U.S. 576 (1966). Because the statutes rarely address themselves to the issue of remand, the law in this area is mainly decisional.[78] Thus, the Government may cite cases including *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 17 (1952),

78. *E.g.*, the Natural Gas Act, 15 U.S.C. § 7171, specifically provides for remand procedures. The Interstate Commerce Act, 49 U.S.C. §§ 17(9), 305(g), 305(h), applicable here, makes no mention of remand.

where this Court recognized as a "guiding principle" that the function of the reviewing court ends when an error of law is laid bare. Similarly, appellees may cite *International Mine Workers* v. *Eagle-Picher Co.*, 325 U.S. 335 (1945), where this Court held that it could refuse an application for remand to the agency or, *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543, 550 (CADC 1969), where the court held that it would serve "no useful purpose to ask the Commission to reconsider the Examiner's action and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair." Appropriateness of remand must be decided on a case-by-case basis. The guiding principle is: if remand would serve a useful purpose, then it is appropriate, *but not otherwise*.

No suggestion was made for remand at any time by any party until the Government's request following the judgment of the District Court. The private appellants have never applied for remand, and no one *ever suggested to the District Court that remand would serve a useful purpose*. The private parties developed the record before the Commission; and if remand would serve any useful purpose, it is certainly logical to look to such parties to contend and demonstrate that remand would be appropriate. However, only the Government suggests, for the first time, that any useful purpose would be served—a contention entirely at odds with the position of the private appellants.

The distinction between cases ordering remand and those finding remand inappropriate lies in each court's determination of the question of useful purpose. The District Court set forth at some length its reasons for its considered refusal to remand the case. First, the court rejected the Government's contention that it lacked jurisdiction to enter



the judgment wherein it made no provision for remand, citing 49 U.S.C. § 17(9); 49 U.S.C. §§ 305(g) and (h); 5 U.S.C. § 706; 28 U.S.C. § 1336a; 28 U.S.C. § 2325 (App. 811-812). That contention, which was the *only* remand issue below, was fully treated.[79] While the District Court recognized "that in a proper situation, a reviewing court should remand a proceeding to the Commission" (App. 814), it held that this case did not present such a situation. Recognizing that the applicants could at any time institute new or additional proceedings with the Commission, it was the court's opinion that the administrative conduct reflected in this record is beyond repair, and, therefore, "the present record should no longer be utilized by the Commission in its determination of the basic issue of public convenience and necessity" (App. 820, 822).

As the court correctly noted, it had before it a voluminous record dealing with the applications of 10 motor carriers. Its concern was with only three of those carriers, appellants here, and it noted that "there are tremendous portions of this record that are wholly unrelated to the applications of Red Ball, Bowman and Johnson. This is a unique situation resulting from the Commission's consolidation of ten major applications, and is a significant fact bearing upon the court's consideration of the Government's motion"[80] (App. 814). Noting this fact, the court found

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79. During the pendency of action before the District Court, no defendant challenged the jurisdiction or the authority of the court until the Government's final motion. Further, no defendant contended that the complaint requested relief beyond the jurisdiction of the court.

80. *E.g.*, counsel for Johnson, in response to questions from the court, placed emphasis on the fact that much evidence of record had no relationship to the Johnson, Bowman and Red Ball case (App. 536). Specifically, 506 of the 933 public witnesses were presented by applicants *other* than the three here involved. Some witnesses supported more than one applicant; *e.g.*, 746 supported the seven applicants *other* than Johnson, Bowman and Red Ball (App. 868).

it inappropriate to remand inasmuch as it "would impede rather than facilitate the Commission's consideration of any further proceeding involving the present and future public convenience and necessity" (App. 814). Further, the court properly found that a remand would put before the Commission a burdensome record containing voluminous extraneous matters, as well as five and six year old facts, which would not be helpful in making a further determination of such issue. For these reasons, and because changes in circumstances made it necessary for the Commission to give consideration to the current situation, the court properly recognized that use of the present record would "impede rather than facilitate" further consideration (App. 815-816). No one contended otherwise!

This situation, as noted by the court, is analogous to that in *Campbell Sixty-Six Express, Inc.* v. *United States*, 258 F. Supp. 529 (W.D. Mo. 1966). There, the court found the Commission's action arbitrary and capricious and set the order aside. There was no remand and there was no appeal. The applicant in that proceeding subsequently filed a new application and a certificate was granted (App. 818). Applicants here have been free at any time to follow the same course. This illustrates that remand is not always necessary nor is it always appropriate.

That remand is not appropriate in all cases is amply demonstrated, not only by the cases set forth above, but also by *Zuber* v. *Allen*, 396 U.S. 168 (1966); *Shannon* v. *United States*, 219 F. Supp. 781 (W.D. Tex. 1963), *aff'd* 377 U.S. 311 (1964); *Pacific Coast Wholesalers Ass'n* v. *United States*, 81 F. Supp. 991 (S.D. Cal. 1949), *aff'd* 338 U.S. 689 (1950); *Garrett Freightlines, Inc.* v. *United States*, 324 F. Supp. 575 (Idaho 1971); *Ashworth Transfer, Inc.* v. *United*



*States*, 315 F. Supp. 199 (Utah 1970); *Pennsylvania R.R.* v. *United States*, 202 F. Supp. 584 (E.D. Pa. 1962).[81]

The Government's attempt to distinguish *Atlantic Coast Line* and *Zuber* fails. It must be remembered that, in the instant case, the request for remand was made only after judgment and then only on jurisdictional grounds. The question raised before this Court was not present in the District Court, and, for that reason alone, is not properly in issue here. In any event, those two cases recognize that in some instances a remand is required but that in other instances the court can dispose of the matter without any necessity for remand.

In view of the "unique situation" involved (App. 814), the case at bar is strikingly similar to *Office of Communication of the United Church of Christ* v. *FCC*, 425 F.2d 543, 550 (CADC 1969), where it was stated by Judge, now Chief Justice, Burger:

> "The record now before use leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that *it will serve no useful purpose to ask the Commission to reconsider the Examiner's actions and its own Decision*

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81. Permanent injunctions were entered against Commission orders, without remand, in *Pacific Coast*, *Shannon*, *Garrett*, *Ashworth*, and *Pennsylvania R.R.* No appeal was taken in the latter three cases, and *Pacific Coast* and *Shannon* were affirmed on appeal. In *Zuber*, involving an order entered by the Secretary of Agriculture, the Court of Appeals (402 F.2d 660) found no reason to remand, and this Court found remand inappropriate, 396 U.S., at 196.

*and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair.*" (emphasis added).

*FCC* v. *Pottsville*, 309 U.S. 134 (1940), and *FPC* v. *Idaho Power Co.*, 344 U.S. 17 (1952), relied upon by the Government, merely state the "guiding principle" of remand.[82] They do not strip a reviewing court of its discretion. It is the exclusive function of a reviewing court to determine whether remand will serve a useful purpose. The Government fails to explain what useful purpose will be served, nor did it even attempt to do so in the District Court. The private appellants, on the other hand, admit by their silence that no such purpose will be served, thus agreeing with the District Court.

The District Court has considered the issue of whether a useful purpose will be served by remand. And the District Court, in its considered judgment, determined that remand would "impede rather than facilitate" further consideration of the issues. The decision was a proper exercise of the court's discretion and should not be disturbed.

As in *Office of Communications of the United Church of Christ*, the record in the instant case is beyond repair. It contains "tremendous portions" of irrelevant and immaterial facts and improper issues[83] which would indeed "impede rather than facilitate the Commission's consideration of any further proceedings involving the present and future public convenience and necessity" (App. 814). For these reasons, and because it was an appropriate exercise of the court's discretion, the District Court properly declined to amend its judgment.

82. *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156 (1962), cited by the Government for procedure to be followed when changes occur, involved a change in statutory law subsequent to the Commission decision, having a direct effect on the decision.



## VI

## The Court's "Usual Rule of Noninterference" Is Applicable

Unquestionably, the reviewing court made a comprehensive, in-depth review and a fair assessment of the record as a whole. Accordingly, this Court's "usual rule of noninterference" is applicable.

While disposing of this case, the District Court was acting as a statutory "reviewing court" pursuant to § 706 and 28 U.S.C. §§ 2321-2325. *Universal Camera Corp.*, 340 U.S., at 491, holds that "[w]hether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of" such reviewing courts. This Court's "power to review the correctness of application of the . . . standard ought seldom to be called into action." *Ibid.* Specifically, "[t]his Court will intervene only in what ought to be the rare in-

83. New and improper issues, "not presented to the Examiners," were injected by the intervening shippers. "The shippers' contentions were more political than judicial. They urged liberalization of the traditional regulatory requisites for certifications, stating that a change in Commission policy was favored by the Administration" (App. 1302). Private appellants suggest that such issues were not, in fact, injected because they were contained in a pleading "never accepted for the record" (Brief 43; Lorch J.S. 13-14). They do not mention their other pleadings and briefs, repeating the same contentions, that *were received*. See, *e.g.*, Lorch's Reply to Petitions for Reconsideration, at 5 and Petition to Supplement Exceptions, at 3.

stance when the standard appears to have been misapprehended or grossly misapplied." *Ibid.*

In *NLRB* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 503 (1951), decided the same day as *Universal Camera Corp.*, this Court said:

> "This is not the place to review a conflict of evidence nor to reverse a . . . [reviewing court] because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a . . . [reviewing court] under the new dispensation finds the . . . [agency's] order unsubstantiated. In such situations we should 'adhere to the usual rule of noninterference where conclusions of . . . [reviewing courts] depend on appreciation of circumstances which admit of different interpretations.' Federal Trade Com. v. American Tobacco Co., 274 U.S. 543, 544."

*Universal Camera Corp.* and *Pittsburgh S.S. Co.* involved questions of substantiality of evidence *vel non*. But clearly those factors underlying the "usual rule of noninterference" make it equally applicable to decisions involving the arbitrary or capricious standard. The substantial evidence standard and the arbitrary or capricious standard are both questions of law.[84] And just as the reviewing court must consider the record as a whole to apply the substantial evidence standard, so must it do so to determine whether the agency violated the arbitrary or capricious standard. The application of both standards calls for the considered judgment of the reviewing court based upon its "evaluation" of the whole record, and its "appreciation of circumstances which admit of different interpretations." Neither standard is cut and dried; neither, a mere litmus test. Just as determination of substantial evidence, *vel non*, "has [been] placed in the keeping of" the reviewing court, so also has the arbitrary or capricious standard.

Except in " 'rare instance[s] when the standard [of review] appears to have been misapprehended or grossly misapplied'," this Court need only find that the reviewing court "made a 'fair assessment' of the record." *FTC* v. *Standard Oil Co.*, 355 U.S. 396, 400 (1958). Accord, *e.g.*, *Golden State Bottling Co., Inc.* v. *NLRB*, 414 U.S. 168, 174 (1973); *Communist Party* v. *Subversive Act. Cont. Bd.*, 367 U.S. 1, 69 (1961); *Peurifoy* v. *Commissioner of Internal Revenue*, 358 U.S. 59, 61 (1958); and *NLRB* v. *American Nat'l Ins. Co.*, 343 U.S. 395, 410 (1952).

After an in-depth and "fair" review of the record as a whole, based upon an evaluation of that record, the District Court found the agency action arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. This Court should therefore adhere to its usual rule of noninterference, even though this Court, if making an independent review, might "find the record tilting one way rather than the other."

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84. Section 706 recites that, *inter alia*, "the reviewing court shall decide all relevant questions of law" and then enumerates the "questions," including the substantial evidence standard and the arbitrary or capricious standard. In addition, the Senate and House Reports accompanying the APA state that § 706 "provides that questions of law are for courts rather than agencies to decide in the last analysis and it also lists the several categories of questions of law." S. Doc. No. 248, 79th Cong., 2d Sess. 214, 278 (1946).

## CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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## APPENDIX I

**Specific Exceptions Filed by Private Appellants to the Examiners' Report**

## APPENDIX I

The private appellants filed exceptions to the examiners' report pursuant to the requirements of Rule 96 of the Commission's Rules of Practice.[1] The exceptions filed by each such appellant are as follows:

**Johnson:**[2]

The Examiners erred in:

(1) generally merging throughout their recommended report their consideration, findings, and conclusions respecting the evidence relating to the Johnson application and other applications consolidated herein and in thereby failing to evaluate and make adequate findings and conclusions relating to the Johnson application as a separate and independent matter;

(2) finding, on the basis of their erroneous treatment of the applications as a group, that there is no public need for the service proposed by the Johnson application because existing service is adequate; and

1. Rule 96-Exceptions to officer's report.

"(a) *Generally.* Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relied upon to support the exception and a corrected statement must be incorporated." 49 C.F.R. 1100.96(a).

2. Johnson Exceptions, March 24, 1970, at 4.



(3) concluding on the basis of their erroneous treatment of the applications as a group, that the benefits of the service proposed by the Johnson application would be "far outweighed by the serious adverse effect" that grant of the Johnson application may have upon existing carrier services.

**Bowman:**[3]

The Examiners erred:

(1) In considering all 10 applications collectively, and neglecting and failing to relate the testimony to the Bowman proposal or to give effect to the multiple complaints directed toward existing carriers.

(2) In arriving at ultimate conclusions and basing the Recommended Report on broad generalities without specific findings as to the basic facts of record.

(3) In considering and treating the testimony only in relation to commodities shipped to the substantial exclusion of territories and points involved.

(4) In failing to consider the divisible aspects of the Bowman application.

(5) In failing to recommend approval of the Bowman proposal to serve 10 named Mississippi points.

3. Bowman Exceptions, March 10, 1970, at 12, 13.

(6) In failing to recommend that the service proposed by Bowman to Kansas City, Kansas-Missouri, Springfield and Carthage, Missouri, and Topeka, Kansas, be approved.

(7) In failing to recommend approval of all aspects of the Bowman application.

**Red Ball:**[4]

The Examiners erred:

(1) In concluding that the 933 public witnesses failed to establish a need for an additional carrier service.

(2) In concluding that a grant of the Red Ball application will have an adverse affect on existing carrier services.

(3) In treating these applications as "all or nothing at all".

**Intervening Shippers:**[5]

The Examiners erred:

(1) In recommending an economic love feast ("a more cooperative effort and better communication," "exercise of more diligence and care," and "an understanding of the practical problems involved") between carriers and shippers as a substitute for competition.

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4. Red Ball Exceptions, March 10, 1974, at 7, 13, 16.

5. Lorch Exceptions, filed March 23, 1974, accepted, *nunc pro tunc*, March 30, 1970, at 22, 23.



(2) In concluding that the Commission must grant existing carriers an opportunity to remedy deficiencies in service before authorizing proposed service by another carrier.

(3) In determining public convenience and necessity by placing considerations of possible detriment to existing carriers through increased competition ahead of benefit to the public, including intervening shippers.

(4) In concluding that "[t]he primary issue is not so much the availability of service, but whether the quality of the existing authorized services is adequate to meet the needs and requirements of the public."

(5) By sidestepping the consideration of "monopolistic tendencies in evaluating the existing motor carrier services in order to encourage competition, innovation, and improvement of service to the public. . ."

# APPENDIX II

## Examples of Findings and Conclusions by the District Court That the Division's Treatment of the Evidence Was Arbitrary and Capricious, an Abuse of Discretion, and Without Rational Basis

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*Note*: This appendix sets forth direct quotations from the District Court's opinion as published in 364 F. Supp. 1239. The copy of the opinion included in the printed Appendix prepared by appellants contains numerous typographical errors, some, but not all, of which are listed on the "Errata Sheet" to the Appendix.

## APPENDIX II

The opinion of the District Court (364 F.Supp. 1239; App. 1275) has been analyzed for the purpose of setting forth examples of its findings and conclusions that the Division's treatment of the evidence was arbitrary and capricious, an abuse of discretion, and without rational basis. In each instance, the finding is first set forth followed by the related conclusion.

### Findings A

The pivotal point of the Division's grant to Red Ball, Bowman and Johnson involved the treatment of evidence relating to the quality of existing service. As noted, applicants contended that the quality of existing service, primarily from a transit-time standpoint, failed to meet the needs of shippers. In resolving this issue adverse to applicants, the Examiners gave consideration both to the evidence as to transit time presented by the shippers and to the voluminous evidence on the same subject presented by protestants. Although the Division expressly adopted the Examiners' findings relative to protestants' proof, they reached the conclusion that the transit-time studies presented by the protestants "do not present as valid a picture as those introduced by those witnesses supporting the applications." This conclusion was predicated upon two factual findings as to protestants' studies: "(1) that most either relate to short periods of time or cover traffic handled for specific shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers." 114 M.C.C. at 599 (364 F.Supp. at 1250; App. 1293).



### Conclusions A

12. There is no rational basis for the Division's refusal to give weight to the extensive transit-time studies presented by protestants. These studies constituted the most important part of protestants' evidence and collectively reflected their service on more than 120,000 shipments. No contention was made at the hearing or on brief that they did not portray normal or representative service of the involved carriers. The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. For example, as to plaintiff Campbell, the Division's finding makes no mention of the length of time or the dates involved in its studies. 114 M.C.C. at 777. Other findings were stated in the same manner; that is, the results were set forth without regard to the length or the date of the studies, thereby showing that the Division deemed such facts unimportant. The conclusion that these studies are entitled to little weight because they "relate to short periods of time" is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants'. The Division's reliance upon the applicants' studies and its refusal to rely upon protestants' studies constitutes arbitrary and capricious actions (364 F.Supp. at 1259; App. 1310).

### Findings B

Plaintiffs contend that this treatment of vital evidence presented in support of their protests was arbitrary, capricious, and an abuse of discretion and, therefore, violative

of the provisions of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). This contention is based upon a comparison of the Division's treatment of protestants' evidence with other findings in its report:

> 1. The Division gave credence to and predicated ultimate conclusions upon the same type of studies presented by applicants that (a) covered periods of time as short as or shorter than those presented by protestants and (b) covered periods of time in which the applications were pending, such periods being, in some instances, more recent than those utilized by protestants. See e. g., 114 M.C.C. 586.
>
> 2. The periods of time covered by protestants' studies conformed generally to the periods covered by the shippers' studies.
>
> 3. The shippers' studies generally "comprise only a *few* shipments made over a very extensive period of time," whereas all protestants' studies included *all* shipments handled during the periods covered.
>
> 4. Whereas shippers, or applicants acting for shippers, picked shipping documents "selected specifically to show poor service" or included only "records of shipments upon which there had been some difficulty," the protestants' studies included all shipments, good and bad. (See Examiners' Report, p. 10). (364 F.Supp. at 1251; App. 1293).

The protestants' transit-time studies, discredited by the Division, were given considerable weight by the Examiners. The Division acted on its own motion in finding that they were entitled to little weight because "they relate to short periods of time," or because they "cover traffic handled for specific shippers," and because "they were made when protestants were confronted with the possibility of grants of authority to additional carriers." The record disclosed that all such exhibits were presented as representative of normal service rendered by the involved carriers. No one challenged this fact at the hearing or on exceptions. In finding that they were entitled to little weight for the reasons assigned, the Division acted *ex mero motu*, thereby depriving protestants of any opportunity to defend their propriety or correct the alleged deficiencies. The condemnation of such studies on the ground that some "cover traffic handled for specific shippers" is particularly unwarranted. Again, this "deficiency" was not suggested by any party; therefore, the sponsors of the exhibit were given no opportunity to explain the inappropriateness of the criticism. Explanations contained in petitions for reconsideration were apparently ignored by a majority of the Division. Regardless of such explanations, however, even a casual examination of the record would have disclosed that all protestant exhibits covering "traffic handled for specific shippers" related to shippers that had testified in support of the applications. They consisted of obviously relevant evidence offered to rebut the shippers' evidence. In like manner, no suggestion had been made by any party that protestants' exhibits did not reflect normal or representative service because they covered "periods subsequent to the notice of the commencement of the hearings in these proceedings." Clearly, applicants could not have challenged them on this ground, since all of applicants' exhibits, accepted and credited by the Division, were subject to the identical "deficiency." Overlooked by the Division were the exhibits presented by one protestant covering periods prior to such notice, as well as subsequent thereto. (Exhibits 1747-1763). General service exhibits were presented by fourteen different protestants (including Red Ball) and collectively reflected service of more than 120,000 shipments. (364 F.Supp. at 1251; App. 1295).

**Conclusions B**

13. The Division's condemnation of protestants' studies on the ground that some "cover traffic handled for specified shippers" is particularly unwarranted. The applicants placed in issue the quality of service rendered by specific carriers to specific shippers by presenting such shippers as witnesses. Protestants then presented shipping documents taken from their files evidencing specific service rendered for those same shippers. Clearly, there is no rational basis for the Division's consideration of such evidence presented by applicants and its refusal to consider such evidence presented by protestants.

14. The rejection of protestants' traffic studies on the ground that they cover periods of time subsequent to the filing of the applications is also without rational basis. The Division made specific findings in favor of applicants based upon applicants' studies that covered similar or later periods of time. Again, one standard was applied to applicants and a different standard to protestants. The "law does not permit an agency to grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case." Mary Carter Paint Co. v. F. T. C., (5 Cir. 1964) 333 F.2d 654, 660 (concurring opinion), rev'd on other grounds 382 U.S. 46, 86 S.Ct. 219, 15 L.Ed.2d 128. HC&D Moving & Storage Company v. United States, (Hawaii 1969) 298 F.Supp. 746.

15. The "deficiencies" that, in the view of the Division, destroyed the effectiveness of protestants' studies were "deficiencies" that had not been suggested by anyone prior to the Division's ruling. Protestants, therefore, were given no opportunity to defend the propriety of such evidence or correct such "deficiencies." Applicants and protestants alike had followed identical established standards in presenting their traffic studies, and if such standards are to be changed, the parties were entitled to reasonable notice and an opportunity to conform to such change. The Commission's failure to do this under similar circumstances required the court, on two occasions, to set aside their orders in Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1967) 263 F.Supp. 552, appeal dismissed as moot, 389 U.S. 576, 88 S.Ct. 689, 19 L.Ed.2d 775 (1968); Ringsby Truck Lines, Inc. v. United States, (D.C.Colo. 1972) 1972 Fed.Carr.Cas. ¶ 82,305, case dismissed, U.S.Sup.Ct. Oct. 24, 1972. In its first decision the court stated:



> "Certainly when carriers appear before the commission, they are entitled to know by what standards they are going to be judged • • • and indeed the Commission itself has said that 'in fairness, standards should not be changed without due notice.' General Increases—Transcontinental, 319 I.C.C. 792, 803 (1963). See also, E. Brooke Matlack, Inc., v. United States, 119 F.Supp. 617 (E.D.Pa. 1954)."

In *Ringsby*, as in the case at bar, the Division rejected traffic studies as not being representative although "there was absolutely no counteravailing evidence" as to their representativeness. This court agrees with the court in *Ringsby* that there was no rational basis for such action.

. . .

25. Certain defendants seek to support the Division's rejection of protestants' service exhibits as being consistent with prior Commission decisions. They cite Braswell Motor Freight Lines, Inc., Extension—Atlanta, (1966) 100 M.C.C. 482, but in that case the Commission found that:

> "• • • most of the service deficiencies relating to transit times about which the supporting shippers

and receivers complain and which are reflected in their service exhibits *are not directly disputed or explained in the service exhibits sponsored by any protestant, or otherwise.*" 100 M.C.C. at 493.

Thus, in *Braswell*, the Commission criticized protestants for *failing* to present service exhibits that directly disputed the shippers' exhibits. In the case at bar, however, the Division criticized the protestants because they *did* present such evidence.

Taking note of the Division's rejection of protestants' studies because they related to service rendered after the applications were filed, defendants cite T.S.C. Motor Freight Lines, Inc. v. United States, (Tex.1960) 186 F. Supp. 777, aff'd sub nom. Herrin Transportation Co. v. United States, 366 U.S. 419, 81 S.Ct. 1356, 6 L.Ed.2d 387. Protestants' traffic studies were discredited by the Commission in that proceeding because there was 'evidence showing a noticeable increase in satisfactory service shortly prior to the hearings on these applications.' There was no such evidence in the present case, however. In fact, applicants here alleged that there was a deterioration of service during the period subsequent to the filing of the applications. (364 F.Supp. at 1260, 1263; App. 1311, 1317).

**Findings C**

Plaintiffs further contend that the Division arbitrarily considered only those portions of the shippers' transit-time studies that were favorable to applicants while refusing to consider those portions unfavorable to applicants. This contention is supported by the Division's failure to consider the summaries of the shippers' exhibits prepared by protestants. These summaries of the shippers' evidence demonstrated that service rendered by the applicants was not superior, but in fact was inferior, to that rendered



by protestants, and that protestants' service was, on the whole, reasonably expeditious. (364 F.Supp. at 1251; App. 1294).

**Conclusions C**

17. Other evidence received similar arbitrary treatment by the Division. It predicated essential findings upon portions of traffic studies, presented by applicants' shippers, favorable to applicants, but refused to consider comprehensive summaries of the identical studies compiled by protestants and relied upon by protestants to demonstrate that applicants' own exhibits, viewed in their entirety, showed performance by protestants superior to that of applicants as well as reasonably adequate protestant service. . . . .

18. Other evidence presented by applicants' shippers received similar treatment by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received emphasis by the Examiners but no consideration by the Division. (364 F.Supp. at 1261; App. 1313).

**Findings D**

Bowman and Johnson both presented transit-time studies for the declared purpose of demonstrating their ability to perform in accordance with their proposals. Red Ball, as a protestant, presented limited studies of this type. At one point in its report, the Division accepted applicants' evidence as substantiating applicants' ability to perform as proposed. However, in disposing of protestants' contentions that, when viewed in their entirety, applicants' evidence demonstrated performance inferior to that proposed, the Division ruled that such evidence could not be con-

sidered for the purpose of testing applicants' ability to perform as proposed. Accordingly, the identical evidence offered by applicants was accepted and credited, to the extent favorable to applicants, but rejected as having no probative value when stressed by protestants. Compare 114 M.C.C. at 586 and 611. Bowman, on brief, continues to urge the appropriateness of such evidence as providing the "best comparison" of its present with its proposed service (Bowman brief, p. 65), thereby acknowledging the Division's error in ruling that, to the extent such evidence was unfavorable to applicants, it had no probative value.

. . .

The significance of the Division's refusal to consider portions of applicants' evidence reflecting unfavorably on applicants and their stated refusal to afford weight to protestants' service exhibits is demonstrated by brief comparisons of applicants' service with protestants' service, as reflected by the exhibits. Before the Commission and before this Court, Bowman recommends its service exhibits as offering "the best comparison for the service actually being performed over present and proposed routes." Protestants pointed out to the Division, however, that such exhibits actually establish performance greatly inferior to that proposed. In many instances, Bowman demonstrated that it delivered its traffic on time only 55% of the time. Johnson's on-time performance ranged from 22.5% to 58.5%. These facts were ignored by the Division. They did find, however, the protestants' evidence reflected greatly superior service. For example, as to plaintiff Gordons, the Division found that its record of 5,694 shipments "disclosed 'on-time' performance on 81 percent of the shipments, and that 96 percent were delivered by the first day beyond the established standard." 114 M.C.C. at 768. On 7,885 shipments transported by plaintiff Mercury, its on-time performance "ranges from



a low of 76.4 percent to a high of 93.8 percent." 114 M.C.C. at 771. Plaintiff Campbells' on-time performance ranged "from 71.6 percent to 82.4 percent." 114 M.C.C. at 777. Plaintiff Roadway's performance on more than 16,000 shipments "indicates a very substantial on time performance." 114 M.C.C. at 783. Another protestant, on more than 7,000 shipments, established "on time service performance ranging from a low of 80.5 percent to a high of 90.9 percent and an overall average of 86.4 percent." 114 M.C.C. at 790. Various other findings also appear in Appendix G; however, in the body of the Division report, none of these findings are mentioned. (364 F.Supp. at 1251, 1252; App. 1295, 1296).

**Conclusions D**

16. While predicating findings, favorable to applicants, upon applicants' traffic studies, the Division refused to consider those portions of the *same exhibits* reflecting unfavorably upon applicants. For example, Bowman's studies are cited to support the conclusion that Bowman *can* perform the type and quality of service proposed (p. 586) but the *identical exhibits* were found to have *no probative value* when cited by protestants to support their challenge that Bowman *cannot* perform as proposed (p. 611). Since such studies were presented by applicants for the stated purpose of establishing "the feasibility of the proposals," and since applicants still commend them on brief as being the best evidence of applicants' capabilities, the Division's refusal to consider those portions unfavorable to applicants clearly lacks a rational basis.

. . .

In making its decision "the court shall review the whole record or those parts of it cited by a party * * *." 5 U.S.C. § 706. Although some question concerning the court's duty to review the whole record existed prior to

enactment of the Administrative Procedure Act, Professors Jaffe and Davis, the two leading authors on administrative law, both emphasize that this question was laid to rest with the decision in Universal Camera Corp. v. N. L. R. B., *supra*. Professor Davis cites the statement by Justice Frankfurter in Universal Camera Corp., at 340 U.S., at 488, 71 S.Ct., at 464, that: "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." K. Davis, Administrative Law Treatise, Vol. 4, § 29.03, at 129-30 (1958). Professor Jaffe explains the requirement for review on the whole record, as follows:

> "* * * This must mean evidence in the case and in the context of the case. To abstract out of a case that part of the evidence which can be made to support a conclusion is to imagine an abstract case, a case that was never tried. *A conclusion based on such abstracted evidence may be 'rational,' but it is not a rational decision of the case which was in fact tried.* Evidence which may be logically substantial in isolation may lose its logical relevance, even its claim to credibility, in context with other evidence. The rationality or substantiality of a conclusion can only be evaluated in the light of so much of the situation as is made to appear * * *." Judicial Control of Administrative Act, at 601.

10. Our review of the Division's report in the light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record. Such action was, therefore, in the legal sense, "arbitrary and capricious." Campbell Sixty-Six Express, Inc. v. United States, (W.D. Mo. 1966) 258 F.Supp. 529. (364 F.Supp. 1260, 1259; App. 1312; 1309).



**Findings E**

Again acting on its own motion, the Division took official notice of an industry publication which revealed that one protestant discontinued its terminal at one of the involved points subsequent to the hearing. 114 M.C.C. at 605. At the same time, the Division relied strongly upon its finding that Red Ball maintained 92 terminals, "about three times the collective number of terminals operated by" the three other Southwestern carriers. 114 M.C.C. at 602. In view of such findings, protestants urged the Division to notice that the same industry publication cited by the Division revealed the fact that Red Ball had discontinued 35 of the terminals mentioned by the Division. The Division declined to acknowledge this admitted fact. Also ignored was the evidence of record disclosing Bowman's failure to maintain terminals at numerous major cities along its routes, many of which are far larger than the one at which the protestant's terminal was discontinued. (364 F.Supp. at 1253; App. 1298).

**Conclusions E**

20. On its own motion, the Division took official notice of an industry publication which revealed that one terminal described in a protestant's evidence had been closed subsequent to the hearing. At the same time, the Division placed emphasis upon the large number of terminals maintained by applicant Red Ball. Since the same industry publication cited by the Division also revealed that many of Red Ball's terminals had been closed subsequent to the hearing, the Division should have noted that its findings as to Red Ball were substantially incorrect. Most certainly the Division should not have relied upon information in the publication favorable to an applicant while refusing to consider those portions of the

same publication reflecting unfavorably upon an applicant. In like manner, if the Division considered it significant that a protestant failed to maintain a terminal at one of the involved points, why was no mention made of Bowman's failure to maintain terminals at numerous, larger cities? The basic rudiments of fairness were simply not applied. (364 F.Supp. at 1261; App. 1314).

**Findings F**

After enumerating various complaints voiced by the shippers, the Examiners found that: "The entire scope of the complaints fall upon both applicants and protestants, as well as upon other carrier services which the witnesses use." (Examiners' report, p. 8). The complaints embraced interline or service restrictions promulgated by Red Ball, Bowman, and Johnson as well as by certain protestants. The Division discussed the complaints as they related to protestants' service, but ignored the admitted fact that they applied equally to applicants' service. For example, the Division specifically condemned certain protestants for promulgating tariff or service restrictions while refusing to mention identical restrictions promulgated by Red Ball, Bowman and Johnson. 114 M.C.C. at 596-8. Evidence of applicants' restrictions appear in the record. In addition, protestants unsuccessfully urged the Division to take note of additional restrictions of this type filed with the Commission by such applicants subsequent to the hearing. In their briefs, applicants, following the Division's pattern, emphasize evidence of deficiencies relating to protestants but ignore identical evidence relating to applicants. (364 F.Supp. at 1253; App. 1297).

**Conclusions F**

. . . The Division also refused to consider interline and service restrictions imposed by Red Ball, Bowman



and Johnson, as shown in the record, while predicating conclusions based upon identical restrictions and practices on the part of certain protestants. [Also ignored were additional service restrictions filed with the Commission by such applicants subsequent to the hearing.] Again, the identical type of evidence was relied upon by the Division when favorable to applicants and ignored when adverse to applicants. The Examiners, however, cited and relied upon all such evidence. (364 F.Supp. at 1261; App. 1313).

**Findings G**

At several places in its summary of protestants' evidence, the Division refers to extensions or expansions of certain protestants' operating authority, resulting largely from mergers or acquisitions consummated subsequent to the close of the hearing. At no point in its report, however, does the Division evaluate the effect of this expanded service. More significant is the Division's failure to make any comprehensive evaluation of the scope or extent of all carrier service available at the time of its decision. This is particularly significant because its decision was rendered more than four years after the close of the hearing. Instead of considering the quantum of service available at the time of its decision, the Division referred, instead, to a study presented by Johnson at the opening of the hearing, and concluded that such study disclosed "that comparatively there is a paucity of single-line motor carrier service available." 114 M.C.C. at 592. The study referred to was then more than five and one-half years old. It showed, for example, that only three single-line carriers operated between Atlanta and Dallas, the focal points of the applications. Actually, however, there were thirteen such carriers operating between these points at the time of the Division's decision. The exhibit relied upon by

the Division for its finding concerning the "paucity of single-line motor carrier service available" reflected three carriers authorized to operate between Atlanta and Houston, one between Atlanta and Baton Rouge, and three between Atlanta and Jackson. At the time of its decision, however, eleven were in operation to Houston, seven to Baton Rouge, and eight to Jackson. Similar changes took place between more distant cities. Between Baltimore and Houston, there was an increase from one to seven; between Boston and Dallas the increase was from three to nine; between Charlotte and Dallas, from one to five; between New York and Jackson, from zero to three; between Philadelphia and Houston, from two to six; and between Richmond and Baton Rouge, from zero to three. (See Summary reproduced in plaintiffs' initial brief, pp. 142-5). The Division ignored protestants' pleas that consideration be given to this increased service. (364 F.Supp. at 1253; App. 1298).

**Conclusions G**

21. The court cannot discern any rational basis for the Division's conclusion that three additional carriers are needed to meet the needs of the shipping public. The report contains no comparative analysis of the quantity of service available between any of the involved points; therefore, there is simply no way to determine whether the available service between any such points is or is not sufficient. Although references were made in an appendix to the grant of certain additional authority to some protestants subsequent to the hearing, neither the extent nor the effect of such authority is mentioned in the Division's evaluation of the evidence. Instead, the Division refers to an exhibit, then more than five and one-half years old, as showing "that comparatively there is a paucity of single-line motor carrier service available." The statement that new grants of authority to protestants and others have "been accorded full and careful consideration" (p. 576) cannot be accepted as a substitute for adequate findings, and the report is devoid of any findings or any discussion of the total services available at the time of the hearing and at the time of the decision.



The issue before the Commission involved the "present or future public convenience and necessity." 49 U.S.C. § 307(a). At the close of 1971, when its decision was made, the Division discussed only the quantity of service available in early 1966. At the same time, however, it acknowledged its duty to consider the recent grants of authority by citing West Brothers, Inc., Extension—Baton Rouge, La., (1969) 108 M.C.C. 485, 489, and Ayers, Extension—Cheyenne, Wyo., (1965) 99 M.C.C. 795, 797. *West* is uniquely applicable. There, the Commission declined to grant authority to West (a plaintiff herein) between Birmingham and Baton Rouge (points here involved) solely on the ground that one carrier, Mercury (another plaintiff herein), had been granted authority to operate between such points subsequent to the hearing of West's application, stating:

> "In order to carry out the dictates of the national transportation policy, we may take official notice of our actions in other proceedings which bear materially upon the issues under immediate consideration. In so doing we must give effect to the actions taken in other proceedings. [citing cases]. While Mercury is not a party to this proceeding, we may take official notice of its recently granted certificate." 108 M.C.C. at 489.

To illustrate: Nowhere in the report now under review does the Commission consider, or even disclose, that the exhibit showing a "paucity of single-line service" reflected only one direct carrier between Atlanta and Baton Rouge in 1966, whereas seven such carriers were in operation at the time of the Division's decision. *West* was decided while the present case was pending on exceptions. If the addition of one carrier (Mercury) between Birmingham and Baton Rouge was sufficient to cause denial of West's application, why, indeed, did not the addition of six new carriers require denial of the present applications between Atlanta and Baton Rouge? The Commission's report does not supply a rational answer to this question. Instead, it contains a grant of three more carriers between Atlanta and Baton Rouge, bringing the present total to ten. It also grants two more (Red Ball and Bowman) between Birmingham and Baton Rouge, a decision which appears to be in direct conflict with its prior decision in West. (364 F.Supp. at 1261; App. 1314).



## APPENDIX III

**Examples of Findings of Fact in an Appendix to the Division's Report Showing Adverse Effect on the Public Interest**

## APPENDIX III

Some specific examples of serious adverse effect on existing carriers which the examiners found would result from the grant of any authority and which would be adverse to the public interest, as set forth in Appendix D to their report (App. 1193). The Division adopted such findings verbatim in Appendix G to its report (App. 319):

*Plaintiff Holloway*: ". . . They are completely satisfied with the service Holloway affords . . . All of the westbound and a large portion of the eastbound traffic of Holloway would be subject to diversion with the grant of the Bowman application." (App. 320-321).

*Plaintiff Alamo*: ". . . diversion of this valuable freight may adversely affect its ability to render a satisfactory service in this area." (App. 323).

*Protestant Missouri Pacific and other rail interests*: ". . . These protestants are not operating to capacity and diversion of any of their traffic will adversely affect them." (App. 328).

*Plaintiff Gordons*: ". . . The traffic Gordons handles is especially susceptible to diversion by the new service proposals of these proceedings. . . . Overall, 54 percent of all shipments handled by Gordons on its entire system are subject to diversion through these proceedings representing 54.6 percent of its tonnage and 58.5 percent of its total 1966 operating revenue. . . . Diversion of their freight to other carriers will seriously affect Gordons' ability to render adequate and satisfactory service, and will result in increasing its operation of empty vehicle miles between certain of its terminals. In 1966 Gordons operated empty vehicles



a total of 1,045,560 miles, much of it between points involved in these applications." (App. 330).

*Plaintiff Mercury Motors*: ". . . This freight (1,079,150 pounds, producing revenue of $8,764) is subject to diversion to Bowman should the Bowman application be granted." (App. 332).

*Plaintiff West Brothers (now Roadway of Miss.)*: ". . . Any diversion of freight from its primary terminal points leaving operations only at the numerous smaller communities will be destructive of West's business and operations." (App. 335).

*Applicant-protestant Deaton*: ". . . Diversion of any northbound freight creating further imbalance of operation will be extremely harmful to Deaton's operations." (App. 335).

*Applicant-protestant Floyd & Beasley*: ". . . Any diversion of its present traffic will seriously affect its financial stability." (App. 336).

*Protestant Pilot Freight*: ". . . A diversion of freight will be detrimental to Pilot's operations." (App. 338).

*Protestant Mason and Dixon*: ". . . A grant of the Bowman application will subject a very substantial portion of this traffic (6.5 million lbs.) to diversion." (App. 338).

*Plaintiff Campbell*: ". . . Diversion of freight from its terminal points will result in a deterioration of service at many of the smaller points served by Campbell Sixty-Six, particularly in Mississippi, which are not proposed to be served directly by these applicants." (App. 339).

*Protestant East Texas*: ". . . Any diversion of its present freight which may result from the grant of

these applications will impair its ability to continue its present standard of service." (App. 342).

*Plaintiff Transcon*: ". . . Freight being handled by Transcon between the southeast and southwest area would be subject to diversion by these applications. The importance of such traffic to Transcon is apparent from the following data. . ." (App. 343).

*Plaintiff Roadway*: ". . . In addition to the diversion that may result from grant of these applications, it also would result in a further imbalance of the roadway operation which is now heavy westbound. During the first half of 1967 Roadway operated 157 vehicles empty from Texas eastward to Atlanta or beyond. Loss of any of its eastbound traffic from the Texas origins or connecting points will result in greater imbalance." (App. 345).

*Applicant-protestant Herrin*: ". . . A very substantial portion of Herrin's freight will be subject to diversion if these applications are granted." (App. 346).

*Plaintiff ET&WNC*: ". . . A large portion of the freight which is handled by ET&WNC either single-line or joint-line will be subject to diversion if these applications are granted. . . This is valuable and necessary traffic and any loss will adversely affect ET&WNC." (App. 347).

*Plaintiff United (now Campbell)*: ". . . Any diversion of its traffic will adversely affect United and its ability to continue quality service, particularly at the small communities between Birmingham and Atlanta. A further imbalance of its traffic flow which may result from such diversion also will be detrimental to United." (App. 348).

see 73-1069,
1070,1071,1072

Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-1055, 73-1069,
73-1070, 73-1071, and 73-1072

BOWMAN TRANSPORTATION, INC., *et al.*,

*Appellants,*

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., *et al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION

## REPLY BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, *ET AL.*

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## REPLY BRIEF FOR APPELLANTS BOWMAN TRANSPORTATION, INC., JOHNSON MOTOR LINES, INC., RED BALL MOTOR FREIGHT, INC., AND LORCH-WESTWAY CORPORATION, *ET AL.*

---

The keystone of Appellees' argument is that the Three-Judge Court did not weigh the evidence. Brief at 9, 44. That Court's opinion refutes that contention. The Court fashioned a novel standard of judicial review,

without precedent in statute or decision. This standard accommodated improper reweighing of the evidence and rejection of the agency's specialized knowledge and expertise. The Court has reiterated these mistaken views in *Bredehoeft Produce Co. v. United States*, 376 F. Supp. 70, 79 (W.D. Ark. 1974).

Appellees acknowledge that the Court's decision is almost a verbatim copy of Appellees' proposed findings of fact and conclusions of law. Brief at 62, 63.[1] Appellees misstate Appellants' reasons for bringing this matter to the attention of this Court. Appellants' principal challenge is not to the copying itself, but to the errors copied by the Court below from Appellees' proposals. *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656; *Bradley v. Maryland Casualty Co.*, 382 F.2d 415, 423 (8th Cir. 1967) (opinion per Blackmun, J.). Appellees thereby led the Court below into errors which must be corrected if the proper relationship between the judiciary and administrative agencies is to be preserved. *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620-621.

**1. The Three-Judge District Court Re-weighed The Evidence, And Impermissibly Substituted Its Judgment For That Of The Agency.**

The Court stated that "...a mere review of the sufficiency of the evidence will not suffice in a proceeding, such as the one now before the Court,

[1]The copying is 40 out of 43 pages. Compare App. 1276-1319 with App. 697-738.



where the agency action is alleged to be arbitrary and capricious and resulting from an abuse of discretion." 364 F. Supp. at 1258 (App. 726, 1307). The Court then demonstrates by the very language it used that it re-weighed the evidence stating, *inter alia*:

> 1. "Our review of the Division's [Commission's] report in light of the whole record compels us to the conclusion that the Division based its ultimate conclusions upon subordinate findings that can be supported only by a consideration of portions rather than the entire record.* * *" 364 F. Supp. at 1259 (App. 1309).
>
> 2. "There is no rational basis for the Division's *refusal to give weight* to the extensive transit-time studies presented by protestants [Appellees]. * * * The conclusion [by the Commission] that these studies are entitled to *little weight* because they 'relate to short periods of time' is completely arbitrary. Many covered longer periods of time than those presented by applicants and others covered periods identical to the applicants' [Appellants'].* * *" 364 F. Supp. at 1259-60 (App. 1310) (emphasis added).
>
> 3. "Other evidence presented by applicants' shippers received similar *treatment* by the Division. Findings of the Examiners, and findings embodied in an appendix to the Division's report, reflecting unfavorably upon applicants received *emphasis by the Examiners but no consideration by the Division.*" 364 F. Supp. at 1261 (App. 1311) (emphasis added).

Other examples of the District Court's weighing evidence and where its opinion proves this fact are:

> (a) Transit-time evidence supporting Appellants held to be "inferior" and evidence supporting Appellees "superior". 364 F. Supp. at 1251 (App. 1294).

(b) Appellants' performance evidence held to be "inferior". 364 F. Supp. at 1251 (App. 1295).

(c) "Probative value" of similar or "identical" evidence of Appellees not properly recognized by Commission. 364 F. Supp. at 1251 (App. 1295).

(d) Appellees' transit-time studies given too "little weight" by Commission. 364 F. Supp. at 1251 (App. 1295).

(e) Commission refused "to afford weight" to Appellees' service exhibits. 364 F. Supp. at 1252 (App. 1296).

(f) Commission did not give "weight" to Appellees' "most important" evidence on transit-times. 364 F. Supp. at 1252 (App. 1310).

Characterizations of the Commission's "treatment" of the evidence as arbitrary and capricious do not prove it so. A reading of its Report proves that the Commission carried out its statutory function of weighing the evidence, comparing applicants, and determining where lies the public convenience and necessity. This was not arbitrary or capricious action but a careful, thoughtful performance of statutory duty. Appellees' claims of error really come down to the fact that the Commission does not agree with Appellees as to the weight of the evidence. The Court's decision really comes down to the fact that it does not agree with the Commission as to the weight of the evidence.

Agency findings based upon substantial evidence, as were the Commission's findings here, cannot lack a rational basis so as to be arbitrary and capricious. The Commission's Report demonstrates why the District Court did *not* find that the Commission's findings and



conclusions in this proceeding were *not* based upon substantial evidence. This Appellees' Brief concedes. Brief at 14. Under these circumstances, the Commission's findings were not and could not be irrational or arbitrary or capricious.

The Court below was led into grievous error by Appellees who supplied language in which the Court asserted that the Commission did not weigh the evidence properly. The Court's findings are thus factually incorrect. Refusal to give "weight" or giving "little weight" (App. 715) does not mean failure to weigh. The Commission's Report carefully and reasonably weighed, evaluated and explained why it could not treat Appellees' evidence as more persuasive than Appellants'. The Commission wrote a careful and exhaustive Report consisting of 59 pages plus 196 pages of Appendix (App. 101-367). Along with its own summary of the evidence regrouped geographically (App. 182-318), the Commission set forth a summary of all applications (App. 161-170), all pleadings and exceptions (App. 170-181), the Examiners' summary of Appellees' evidence (App. 316-356), a description of regular routes authorized (App. 356-358), and a listing of the increased population to be served (App. 123, 319). A reading of those pages proves conclusively that the Commission exhaustively considered all evidence presented by Appellees and Appellants, in "what is perhaps the most extensive record ever developed in connection with a single group of motor carrier applications", with 1009 witnesses presenting 23,423 pages of testimony and 1987 exhibits in 147 days of oral hearings. 114 M.C.C. at 573 (App. 103).

As stated above, the Court below held that the Commission arbitrarily gave no "weight" to Appellees' transit-time studies, which were "the most important part of [Appellees'] evidence", purportedly showing "reasonably adequate protestant service". 364 F. Supp. at 1259, 1261 (App. 1310, 1313). In fact, the "treatment" of this evidence by the Commission is fully supported by reasoning set forth in its Report, and the Commission's "treatment" is worthy of more detailed consideration as it is illustrative of the Commission's careful weighing of the evidence. After a concise summary of these transit-time studies, based upon the detailed summary prepared by the Examiners and set forth in full in Appendix G of the agency decision (App. 319-356), the Commission noted that:

> "* * * . . . [W]hile [these studies] . . . demonstrate that in certain instances during the study periods expeditious service was rendered by certain of the protestants [Appellees], these studies must be considered in the light of the facts (1) that most either relate to short periods of time or cover traffic handled for specified shippers and (2) that they were made when protestants were confronted with the possibility of grants of authority to additional carriers. When viewed in this light, we believe that protestants' studies do not present as valid a picture as those introduced by those witnesses supporting the applications here under consideration [Shippers]." 114 M.C.C. at 599 (App. 129).

The Court below erroneously stated that:

> "* * * The length of time covered by the studies or the dates embraced therein were not considered significant by the parties or the Examiners. Indeed, these facts were not deemed sufficiently important by the Division itself to be mentioned in its own findings relative to evidence presented by certain protestants. * * *" 364 F. Supp. at 1259 (App. 1310).



To set the record straight, both the Examiners and the Commission did find these factors important. The detailed summary of Appellees' evidence prepared by the Examiners does set forth the length of time covered or the dates of the studies, *e.g.*, 114 M.C.C. at 782, 791 (App. 344, 353) (See App. E).[2] The Commission not only presented a concise summary of this evidence. It also incorporated into its Report the full summary prepared by the Examiners. The accuracy of the Commission's summary is not challenged by the Court, which disagreed only with the conclusions drawn therefrom. Surely, no inference of arbitrary conduct by the Commission can be drawn from its action in not restating in full in the body of its Report the details of evidence set forth in an appendix to its Report.

The District Court, in re-weighing the evidence, consistently credited the conclusions of the Examiners over those of the Commission, even though it is beyond question that the ultimate responsibility in such expert

[2] Of the approximately 200 shippers submitting transit time studies, about 185 covered traffic handled during a period of over one month. Of these approximately 45 covered traffic handled during a period of from 1 to 3 months, about 35 covered traffic handled during a period of from 3 to 6 months, about 75 covered traffic handled during a period of from 6 months to 1 year, and approximately 30 covered traffic handled during the period of 1 year or more.

While only two of the 14 protestants which submitted transit time studies introduced evidence regarding traffic handled in 1965, about 78 of the studies of the supporting shippers covered traffic handled in 1965 (some in addition to that handled in 1966 and some solely for 1965), and at least 5 covered traffic handled in 1964. (See App. E).

matters lies with the Commission. The Court confuses the Examiners' summary of the evidence, with which there is no quarrel, with their conclusions, with which the Commission disagreed. For example, the Examiners referred to the "anomaly" of certain carriers (*i.e.*, Appellant Bowman) having the dual role of applicant and protestant. (App. 753); 364 F. Supp. at 1247 (App. 1287).

This characterization demonstrates the failure of the Examiners to grasp the significance of this proceeding. The Commission sought to meet the expanding transportation needs of the Southeast and Southwest by a consolidation of multiple applications to provide service in these areas, rather than by atomized consideration of these needs on a certificate-by-certificate basis. The Court was induced by the Appellees to fall into the same error. It was for the Commission – not the Examiners or the Court – to exercise its statutory duty in making this expert judgment, which also was carried out in regrouping the deficiencies and needs of the shippers on a geographical, rather than a commodity, basis (App. 182-318). This geographical regrouping clearly established the basis for the Commission's decision that the public convenience and necessity required the additional service demanded by the outpouring of 933 shipper witnesses as well as the basis for the choice of the three Appellant carriers to meet these demonstrated needs. When the evidence is analyzed geographically, clearly these carriers must be selected as best able to supply the need which the public interest demands.

The Court's erroneous interpretation of the Commission's "treatment" of "the most important part of [Appellees'] evidence" reveals the serious distortion of the process of judicial review which occurred below.



The Court's conclusion is a prime example of its use of an improper standard of review. The Commission's consideration of such evidence as transit-time studies is a matter of fact finding properly to be reviewed pursuant to the substantial evidence test. The reviewing Court cannot substitute its judgment for that of the agency by re-weighing the evidence under the guise of the arbitrary and capricious standard. The Court was wrong both in fact and in law.[3]

The Court below simply substituted its own judgment in determining where lies the public convenience and necessity, and refused to recognize the expertise of the Commission. This was the statutory duty of the agency.

**2. The Commission Did Consider All Of Appellees' Evidence.**

The Court, as proposed by Appellees, stated in its opinion that the Commission did not base its conclusions upon the entire record, or did not "consider" Appellees' evidence. 364 F. Supp. at 1251, 1259 (App. 728, 1294, 1310); Appellees' Proposed Conclusion 10 (App. 777, 1309).[4] Appellees repeat this

[3] As a matter of fact, the District Court repeatedly mischaracterized transit-time studies as those of "applicants", when in fact they were presented by supporting shippers. 364 F. Supp. at 1259-60 (App. 1310-13), 364 F. Supp. at 1261 (App. 1313-14).

[4] Appellees, at page 50 of their brief, argue that "[a]lthough requested to do so by protestants, the Division refused to take official notice of the *same* edition of the *same* publication which showed that Red Ball had closed 35 of its 92 terminals." (Emphasis added). This statement is incorrect. In noting that Cole-Dixie had closed one of its terminals since the close of the hearing, the Commission relied on the Fall 1971 edition of the American Motor Carrier Directory. The evidence concerning the closing of Red

error. Brief at 55, 58-60. The Commission's Report directly refutes this erroneous conclusion, *e.g.*:

> "*The evidence considered in its entirety* is convincing that the additional service so to be authorized will serve a useful purpose, responsive to a public demand and need and that available transportation services between the points and to the extent authority is granted are not reasonably adequate to meet the demonstrated needs of the shipping and receiving public." 114 M.C.C. at 599 (App. 129) (emphasis added).

And:

> "*Considered as a whole, the record demonstrates* that many of the supporting witnesses are not receiving reasonably adequate service." *Id.* at 599-600 (App. 129-130) (emphasis added).

The Commission also twice referred to its consideration of all the evidence of the Appellees.

> "*The evidence,* the recommendations of the hearing examiners and the pleadings *have been considered.* Inasmuch as no exception is taken to the examiners' summary of the evidence presented by the protestants as to their authorities, equipment, and operations, this portion of the examiners' report is hereby adopted and is set forth in appendix G to this report." (App. 105, 319-356) (emphasis added).

> "*The evidence of the opposing carriers,* as summarized by the examiners, is set forth in appendix G of this report." (App. 128, 319-356) (emphasis added).

Ball's terminals subsequent to the hearing was published in the 1972 edition of the American Motor Carrier Directory which was released after the Commission's report which is dated December 30, 1971. In any case, this matter, along with Red Ball's explanation, was considered at the reconsideration stage.



### 3. The Evidence Was Mistakenly Weighed By The Court Below Under The Guise Of An Inapplicable Standard Of Review.

Appellees claim that Appellants "take the position that this Court over-spoke itself in" *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402. Brief at 23. Appellees misstate Appellants' position. Appellants' position is that *Overton Park* does not authorize the application of an additional and more rigorous Court weighing of the evidence test to adjudicatory fact findings "in a case subject to sections 556 and 557" of the Administrative Procedure Act. 5 U.S.C. §706(2)(E). The arbitrary and capricious standard cannot be used as a guise under which a reviewing Court in a case based on a formal record may arbitrarily substitute its judgment for that of the agency where, as here, the agency findings and conclusions based thereon are supported by substantial evidence.[5]

The judicial review provisions of the Administrative Procedure Act require that agency action should be set aside if it violates the Constitution or a statute. 5 U.S.C. §706(2)(B)-(C). The same is true where there is no observance of procedure required by law. *Ibid.* §706(2)(D). Trial *de novo* by the reviewing Court, in effect resorted to by the Court below, is only applicable for adjudication not subject to Sections 556

[5] For a summary of this substantial evidence, see Apps. A-D, which outline that evidence with respect to the overall public convenience and necessity (App. A) and to the basis upon which the Commission granted a certificate to each of the Appellant carriers (Apps. B, C, and D). Appellees did not allege in their complaint and have never argued that the agency order was not supported by substantial evidence. Their confused position is illustrated by their statement that the Three-Judge Court "did not find the actions and conclusions of the agency to be supported by substantial evidence, nor did the Court find that the agency made erroneous findings of fact." Brief at 9.

and 557. *Administrative Procedure Act – Legislative History*, S. Doc. 248, 79th Cong., 2d Sess. 214 (1947). *Ibid.* §706(2)(F). *Cf. First National Bank of Fayetteville v. Smith*, 365 F. Supp. 898, 910-911 (W.D. Ark. 1973) (opinion per Miller, J.) (appeal pending).

This leaves the substantial evidence rule and the standard used by the Court below. Appellees claim that "both standards are applicable". Brief at 9. The substantial evidence rule is only applicable to formal hearings on the record and is embodied in the decisional provisions of the Administrative Procedure Act. 5 U.S.C. §556(d) requires that an order issued by formal adjudication must be "supported by and in accordance with the reliable, probative and substantial evidence". This section codifies the rule developed by this Court in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229, with respect to findings of fact. Under this rule, the Commission is not required specifically to consider and rule upon every item of evidence in the record or every contention made by all parties. *Minn. & St. Louis Ry. v. United States*, 361 U.S. 173, 193-194.

Congress intended the Administrative Procedure Act to be read and applied as a whole. *Administrative Procedure Act – Legislative History*, S. Doc. No. 248, 79th Cong., 2d Sess. 194, 216 (1946). Congress could not have intended to make Section 556(d) redundant by the disjunctive provisions of Section 706(2). Indeed, the arbitrary, and capricious standard of Section 706(2)(A) applies to matters "not in accordance with *law*" (emphasis added). The substantial evidence rule, enacted in Section 556(d), on the other hand, applies to findings of fact. *Camp v. Pitts*, 411 U.S. 138, 141-142.

Appellants never have contended that a concept similar to the arbitrary and capricious standard has no



application to a formal adjudicatory proceeding under the Administrative Procedure Act. *American Farm Lines v. Black Ball*, 397 U.S. 532, 538-539; *Interstate Commerce Commission v. Jersey City*, 322 U.S. 503, 514-519. Examples occur where the deciding officer fails to personally consider and appraise the record in accordance with *Morgan v. United States*, 298 U.S. 468, 477-482; where an administrative agency refuses to consolidate mutually exclusive application hearings, *Ashbacker Radio Corp. v. Federal Communications Commission*, 326 U.S. 327, 333; or where an agency refuses to allow a party to formally intervene while permitting them to file briefs and present evidence and oral argument, *Federal Communications Commission v. NBC (KOA)*, 319 U.S. 239, 247. Such considerations of agency policy and procedure clearly are not at issue in the instant case.

**4. This Court Should Remand With Directions To Affirm The Commission's Order.**

Appellees argue, with respect to the Three-Judge Court's failure to remand, that:

> "The judgment did no more than enjoin the issuance of the specific certificates authorized in such order.
>
> * * *
>
> "The Commission remains free to consider the substantive issues of public convenience and necessity at any time and therefore its delegated powers have in no way been usurped." (Brief at 64).

Such statements are consistent with Appellees' failure to acknowledge the cost, in both dollars and time, which each delay in this proceeding has brought upon

the Shippers, to whom Appellees refer as "private Appellants". This dilatory strategy by Appellees culminated in the Three-Judge Court's permanent injunction against, rather than remand of, the Commission's order. Now, after significant but necessary delay in seeking to correct that Court's errors, "private Appellants" are faced with the prospect of a hollow victory if this Court finds for Appellants, but remands to either the Court below or to the Commission, via that Court, for further action. Appellees have nothing to lose by waiting. Appellants have nothing to gain. The real losers are the Shippers, whose needs the Commission sought to meet. Appellants therefore pray that this Court remand with directions to affirm the Commission's decision.

Such a procedure was employed by this Court in *Federal Maritime Commission v. Svenska Amerika Tinien*, 390 U.S. 238. There, as here, the proceedings had been in progress for more than eight years. The reviewing Court there, as here, had taken "the extraordinary course" of failing to remand to the agency for further action. This Court there stated:

> "Since we have found that the Commission's findings and order are supported by substantial evidence and, since there are no other meritorious contentions raised by respondents, we think it is time for a final disposition of the proceedings. The judgment of the Court of Appeals is reversed; and *the cases are remanded with directions to affirm the order of the Commission.*" 390 U.S. at 252, 253 (emphasis added).

Numerous cases have been disposed of by this Court in like manner. *Chicago & N.W. Ry. v. Atchison Topeka & Santa Fe Ry.*, 387 U.S. 326; *Illinois Central R.R. v. Norfolk and Western Ry.*, 385 U.S. 57, 75; *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 621; *O'Leary v. Brown-Pacific-Maxon, Inc.* 340 U.S. 504, 508; *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 730.



The record here presented is similar in all relevant aspects to these precedents. This case requires a similar resolution. Truly, here, justice delayed would be justice denied.

Respectfully submitted,

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# APPENDIX A

## Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Determining Public Convenience and Necessity.

I. Locations of Facilities of Supporting Public Witnesses.

"Thus, the 8 remaining applicants are supported by 482 shippers with facilities located in the Southwest" specified in the following footnote as "specifically, 84 shippers have facilities in Arkansas, 6 in Colorado, 84 in Louisiana, 1 in New Mexico, 32 in Oklahoma, and 275 in Texas";

"340 shippers in the Southeast" specified in the following footnote as "Eighty-four shippers have facilities in Alabama, 15 in Florida, 114 in Georgia, 1 in Kentucky, 54 in Mississippi, 25 in North Carolina, 25 in South Carolina, 17 in Tennessee, and 5 in Virginia";

"44, collectively, in the Middle Atlantic and New England States" specified in the following footnote as "Four shippers have facilities in Connecticut, 1 in Delaware, 3 in Maryland, 8 in Massachusetts, 1 in New Hampshire, 9 in New Jersey, 5 in New York, 9 in Pennsylvania, and 4 in Rhode Island";

"and 42 in the Midwest" specified in the following footnote as "Fifteen shippers have facilities in Kansas and 27 have facilities in Missouri." 114 M.C.C. 592 (App. 122)



II. Range of Commodities Shipped by Supporting Shippers.

"[The traffic] consists of an extremely wide variety of commodities (the examiners categorized the shipper evidence according to approximately 45 different commodity descriptions) including clothing, pharmaceuticals, metal articles, leather goods, machinery, toys, grocery and department store items, commodities requiring refrigeration, and furniture." 114 M.C.C. 592 (App. 122)

III. Shipper Dissatisfaction with Existing Service.

A. "Approximately 650 shippers have complained about inconsistent and excessive transit times." 114 M.C.C. 596 (App. 126)

B. "[O]ver 200 introduced transit time studies demonstrating the undependable service they currently receive." 114 M.C.C. 596 (App. 126)

C. "About 70 of the shippers located at points in a total of 16 States complain collectively about certain carriers' service restrictions and embargoes as well as about the outright refusals of authorized carriers to handle traffic." 114 M.C.C. 596 (App. 126)

D. "Pickup and delivery complaints were voiced by about 150 shippers located throughout 18 States." 114 M.C.C. 597 (App. 127)

E. "Approximately 110 shippers complain about interline difficulties and about 200 shippers collectively complain about loss, damage, tracing difficulties, and misrouting, much of which occurred in interchange service." 114 M.C.C. 597 (App. 127)

F. "Approximately 170 shippers located at points in 20 of the involved States indicate that they have received complaints from their customers with respect to the existing service." 114 M.C.C. 597 (App. 127)

G. "The above-described difficulties have resulted in shippers losing customers, business, and short-term discounts." (Approximately 80 shippers) 114 M.C.C. 598 (App. 128)

IV. Economic Study, Department of Transportation, University of Houston *re* areas served by applicant Johnson.

"The study develops the theses that the areas presently served by Johnson and the areas Johnson proposes to serve have grown significantly in recent years; that there is substantial trade and commerce between these two areas; and that comparatively there is a paucity of single-line motor carrier service available to meet the demonstrated growth." 114 M.C.C. 592 (App. 122)

V. Population Growth in States Where Supporting Shippers Located. Appendix F 114 M.C.C. 757 (App. 319)



## APPENDIX B

### Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Bowman Application.

1. "Bowman holds. . .authority. . .from, to, and between points in a territory bounded by Chicago, Ill., and points within 35 miles of Columbus Circle, N.Y. on the north; Miami and Pensacola, Fla., and Mobile, Ala., on the south; Memphis and Tuscaloosa, Ala., on the west, and points along the eastern seaboard." 114 M.C.C. 584 (App. 114)

2. "Bowman maintains 25 terminals, most of which are located in the Southeast. It proposes to establish [21 terminals and 3 agency stations in the points proposed to be served in Arkansas, Kansas, Louisiana, Mississippi, Missouri, and Texas]. Its fleet consists of 478 tractors, including 359 sleeper cabs, and 978 trailers." 114 M.C.C. 585 (App. 115)

3. "It proposes to render 1 or 2 day service generally between Chattanooga and Memphis, Tenn., and Birmingham and Gadsden, . . . Montgomery and Mobile, Ala., on the one hand, and, on the other, points in the territory it seeks to serve. Applicant introduced exhibits showing that on the 546 shipments moving from its Miami to its Atlanta terminals (744 operating miles) during a specified 1-week period in 1966, the average transit time was 1.9 days; that on the 321 shipments moving from its Birmingham

terminal during the same period and delivered or interlined at Charlotte (408 operating miles), the average transit time was 1.5 days; that on 206 shipments moving from its Richmond, Va., terminal to its Memphis terminal (855 operating miles) during the same period, the average transit time was 2.5 days; and that on 26 shipments handled from Birmingham to New York, N.Y. (1030 operating miles) during the 1-week period, the average transit time was 2.8 days." 114 M.C.C. 585, 586 (App. 115, 116

4. "...Bowman has persuasively demonstrated a need for its services between specified points in Mississippi, Kansas, Missouri, Arkansas, Louisiana, and Texas, on the one hand, and, on the other, those points in the Southeast and East that it presently serves." 114 M.C.C. 604 (App. 150)

5. "Approximately 135 witnesses in 13 States support that portion of Bowman's application seeking authority to serve the 10 specified Mississippi points. Over 100 of these have experienced difficulties with inadequate, inconsistent, and excessive transit times. The witnesses' transit time studies show that between 3- and 4-day service is generally rendered on a substantial amount of their traffic moving between Atlanta and major Mississippi points, with transit times ranging between 1 and 7 days. From other points in the territory Bowman presently serves, transit times to Mississippi range from 3 to 21 days." 114 M.C.C. 604-605 (App. 150-151)

6. "Approximately 25 supporting witnesses have complained of either refusals by authorized carriers



to handle their traffic, and of carrier embargoes or restrictions; and about 50 have experienced pickup and delivery problems." 114 M.C.C. 605 (App. 151)

7. "Collectively, Deaton, Dixie, Campbell, Roadway, and Ryder [Protestants] are cited for refusing to handle a number of the supporting shippers' traffic to Mississippi from points in the Southeast." 114 M.C.C. 605 (App. 151)

8. "...two protestants to [the Bowman] application (Campbell and Herrin) withdrew their opposition." 114 M.C.C. 605 (App. 151)

9. "Approximately 80 witnesses support the Kansas-Missouri portion of Bowman's application. Over 60 of these complain about pickup and delivery problems, loss, damage, shortage, tracing difficulties, misrouting, interline problems, unsuitable or inadequate equipment, customer complaints, and lost business and penalties." 114 M.C.C. 606 (App. 152)

10. "[Protestants] Roadway and Transcon have declined to handle some of the supporting witnesses' traffic." 114 M.C.C. 606 (App. 152)

11. "Additionally, Bowman has shown that the present and future public convenience and necessity require the extension of its operations to points in the remaining States it proposes to serve." 114 M.C.C. 607 (App. 153)

12. "The evidence of the supporting witnesses establishes a clear and convincing public need for

single-line motor carrier service between the broad southeastern and eastern seaboard territory served by Bowman, on the one hand, and, on the other, the Arkansas points it proposes to serve. Approximately 100 witnesses supported this portion of Bowman's proposal. Many expressed a need for single-line service between the Arkansas points, on the one hand, and, on the other, points in Florida, Georgia, and the Carolinas (other than Birmingham, Atlanta, and Charlotte) for which no such service is available. Existing carriers which hold authority to operate between the Arkansas points and points which Bowman presently serves are limited territorily [sic] either with respect to the Arkansas points they serve or as to the territory Bowman already serves. As a consequence, none can provide the comprehensive single-line service that would be offered by Bowman between the involved Arkansas points and the territory it now serves, and none of the remaining applicants propose such an extensive service." 114 M.C.C. 607-608 (App. 153-154)

13. "Similarly, the protestants are unable to provide the full scope of the single-line services proposed by this applicant between the Louisiana points. . .it proposes to serve and the territory it currently serves. Over 150 witnesses support this portion of Bowman's proposal, and they too have demonstrated material inadequacies in the transportation services they now receive." 114 M.C.C. 608 (App. 154)

14. "With respect to New Orleans, the approximately 30 shippers supporting this aspect of



Bowman's application have shown that the service they are receiving between specified points in Alabama and Tennessee, on the one hand, and, on the other, New Orleans, is not adequate." 114 M.C.C. 608 (App. 154)

15. "Regarding Texas, it is noted that more witnesses from the Dallas-Fort Worth area testified in support of Bowman's application than any of the other applicants. Also, witnesses from numerous points throughout Bowman's authorized territory testified in support of this portion of its application. Many of these shippers do not presently have single-line service to this important area, and none of the other applicants proposes to render the extensive single-line services to be proffered by Bowman." 114 M.C.C. 608 (App. 154)

16. "Many shippers. . .demonstrated. . .that they require the single-line service here authorized to be provided by Bowman, and that the lack of such service has been harmful to them." 114 M.C.C. 608 (App. 154)

## APPENDIX C

### Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Johnson Application.

1. "Johnson holds regular- and irregular-route ... authority to transport principally general commodities, with the usual exceptions. Its regular routes extend between points in a territory bounded by Boston and Worcester, Mass., and Niagara Falls, Oswego, and Glen Falls, N.Y., on the north, and Pensacola, Mobile, Pascagoula and Gulfport, Miss., and New Orleans, on the south, ... Applicant's irregular-route general-commodity authority extends generally to points in New York, New Jersey, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and Florida." 114 M.C.C. 586 (App. 116)

2. "Johnson proposes to operate over two service routes, which it describes as the proposed northern route and the proposed southern route. The former involves general-commodity, regular-route operations between Atlanta and Dallas-Fort Worth, with service at the intermediate points of Jackson, Monroe, and Shreveport, restricted to traffic moving to, from, or through Atlanta. The southern route involves the same type of operations between New Orleans and Houston, with service at the intermediate points of Baton Rouge, Orange, and Beaumont, and service at Texas City, Tex., as an off-route point, restricted



to traffic moving to, from, or through Gulfport, Miss. In other words, no service is proposed between New Orleans and points on the southern route." 114 M.C.C. 587 (App. 117)

3. "The stated purpose of the ... proposal is to permit service of an 'over-head' nature between points on Johnson's present system, on the one hand, and, on the other, points on the proposed routes." 114 M.C.C. 609 (App. 155) 114 M.C.C. 587 (App. 117)

4. "Applicant maintains about 35 terminals at principal points on its routes and in its irregular route territory. ... Proposed terminal points include Baton Rouge, Beaumont, Dallas, Houston, Jackson, Monroe, and Shreveport." 114 M.C.C. 586-587 (App. 116-117)

5. "Johnson operates approximately 500 tractors and 1,000 trailers ... and it will add 50 tractors and 100 trailers to its fleet if its application is granted." 114 M.C.C. 587 (App. 117)

6. "Presently, traffic moving to and from Texas, Louisiana, and Mississippi and points beyond is interlined by [Johnson] mostly at New Orleans and Mobile, with some being interlined at Atlanta. Under the proposal, applicant's traffic lane patterns would be revised and all traffic moving to and from the proposed service area ... will break bulk at Charlotte, and move by two-man teams on a direct nonstop basis between Charlotte and the seven proposed terminal points. Traffic originating or terminating at points in Georgia, and in the

Montgomery and Opelika terminal areas, and in South Carolina (except Wallace, S.C.) will break bulk at Atlanta, and will move by a two-man team on a direct, nonstop dispatch between Atlanta and the seven proposed terminal points." 114 M.C.C. 587-588 (App. 117-118)

7. "Additionally, Johnson has revised its operations and effective March 13, 1966, it commenced using two-man teams which would be utilized on a direct nonstop basis between Charlotte and the seven proposed terminal points here under consideration." 114 M.C.C. 611 (App. 151)

8. "[A]pplicant generally proposes to render between 1- and 3-day LTL service between its authorized territory and the seven terminal points it seeks to serve.... At 33.3 miles per hour, the 816 miles between these terminals [Boston and Charlotte] would be traversed in 24.5 hours.... The 1,110 miles between Charlotte and Houston would be traversed in 28 hours at a speed of 39.6 miles per hour." 114 M.C.C. 589 (App. 119)

9. "Its application is supported by 236 witnesses located throughout the area it serves or proposes to serve." 114 M.C.C. 609 (App.155)

10. "Their [the supporting witnesses'] testimony establishes that the existing service on small shipments traffic between the involved territories is generally inadequate. Many of the supporting witnesses validly complain with respect to lengthy and undependable transit times; and their studies,



considered on the whole, demonstrate that inconsistent and excessive transit times have been experienced on a substantial portion of the involved traffic. Complaints also were voiced by many of the shippers with respect to poor pickup and delivery service, tracing problems, and excessive loss and damage." 114 M.C.C. 609 (App. 155)

11. "Many of the shippers' problems can be attributed to the existing joint-line motor service.... Major east coast motor common carriers ... failed to participate in this proceeding; and it is therefore apparent that important segment ... of the involved joint-line motor carrier system does not oppose the Johnson application." 114 M.C.C. 609 (App. 155)

12. "Of the single-line protestants which serve between the points Johnson proposes to serve and its present territory, Ryder does not hold authority to serve the Dallas-Fort Worth area and much of the Carolinas; Roadway holds authority to perform the proposed 'over-head' service but its service was the subject of many of the shippers' complaints; and the authorities of T.I.M.E. and Transcon are limited to such an extent that they can provide only a portion of the service proposed by Johnson." 114 M.C.C. 609 (App. 155)

## APPENDIX D

### Findings of Substantial Evidence in the Commission Order (114 M.C.C. 571) Supporting Grant of the Red Ball Application.

1. "*The Southwestern applicants.* Whereas the proposals of some of the southern applicants differ somewhat in scope, those of the southwestern carriers are basically similar." 114 M.C.C. 602 (App. 132)

2. "With respect to this latter category of applicants, it is our opinion that the evidence of record including the traffic volumes shown to be moving and all other relevant factors enumerated in this report, justifies a grant of authority to only one of them. In deciding which is to be granted such authority, consideration must be given to the criteria prescribed by this Commission and the courts for the selection of an applicant where, as here, it is not feasible to grant all applications seeking essentially similar authority. Those criteria, as summarized in *Kroblin Refrigerated Xpress, Inc., Ext. -Denison, Iowa*, 96 M.C.C. 233, 237 (1964), is as follows: (1) an evaluation of the existing authorities and operations of the considered applicants, (2) the location of their terminal facilities and the equipment operated by them, (3) the relative date of filing the applications, and (4) the carrier which produced the evidence supporting the finding of public need. *Cf.* also *H.C. Gabler, Inc., Ext. -Cement from Md. and*



*Pa. Counties*, 86 M.C.C. 447, 469-470 (1961), and cases cited therein." 114 M.C.C. 602 (App. 132

3. "Under these criteria, it is noted that Red Ball operates over a much more extensive system of routes in the Southwest than does Herrin, Strickland, or Jones;" 114 M.C.C. 602 (App. 132)

4. "The number of Red Ball terminals (92 terminals located throughout Texas, Louisiana, Arkansas, New Mexico, Colorado, and Oklahoma) is about three times the collective number of terminals operated by Herrin, Strickland, and Jones in the Southwest;" 114 M.C.C. 602 (App. 132)

5. "...with the equipment located at these terminals Red Ball is in a much better position to serve shippers and receivers located in the Southwest than Herrin, Strickland, or Jones;" 114 M.C.C. 602 (App. 132

6. "Red Ball would have to establish 3 additional terminals in the Southeast and proposes to add equipment as it becomes necessary, while (a) Herrin proposed 6 additional southeastern terminals, the reestablishment of a terminal at Little Rock, and would add 41 tractors, 80 trailers, and 67 trucks to its fleet, (b) Strickland proposes to establish 4 additional southeastern terminals, and (c) Jones proposes to establish terminals at 2 southeastern points (Atlanta and Birmingham) and at 2 southwestern points (El Dorado and Texarkana);" 114 M.C.C. 602-603 (App. 132-149)

7. "that Red Ball presented 130 supporting witnesses and an additional 23 witnesses specifically supported its application, whereas (a) Herrin presented 87 witnesses and an additional 11 supported its application, (b) Strickland presented 102 shipper witnesses, and an additional 24 supported its application, and (c) Jones presented 90 witnesses and an additional 117 supported its application;" 114 M.C.C. 603 (App. 149)

8. "Clearly, of the southwestern applicants, Red Ball has made the superior showing with respect to each of the above-described criteria, and, therefore, it is selected to receive the authority for which a public need has been found in this report." 114 M.C.C. 603 (App. 149)

9. "Moreover, none of the other three applicants proposes and none of the protestants (even considering the operations authorized since the hearing herein) is able to provide the extensive single-line service proposed by Red Ball between Atlanta and Birmingham, on the one hand, and, on the other the territory Red Ball now serves." 114 M.C.C. 603 (App. 149)

10. "Clearly, Red Ball is in a better position than Herrin to render this service." 114 M.C.C. 604 (App. 150)



## APPENDIX E

## REPORT AND ORDER OF ICC IN *HERRIN* APPENDIX G - PROTESTANTS EVIDENCE: TRANSIT TIME STUDIES

| | |
|---|---|
| *Consolidated* | 114 M.C.C. 759 (App. 321) |
| *Watson-Wilson* | *Id.* at 764-765 (App. 326-327) |
| *Gordons* | *Id.* at 768 (App. 330) |
| *Mercury Freight* | *Id.* at 771 (App. 333) |
| *West* | *Id.* at 773 (App. 335) |
| *GFA* | *Id.* at 775 (App. 337) |
| **Campbell Sixty-Six* | *Id.* at 777 (App. 339) |
| *Jack Cole-Dixie* | *Id.* at 778 (App. 340) |
| *ETMF* | *Id.* at 780 (App. 342) |
| *Transcon* | *Id.* at 782 (App. 344) |
| *Roadway* | *Id.* at 783 (App. 345) |
| *United* | *Id.* at 786 (App. 348) |
| *Red Ball* | *Id.* at 787 (App. 349) |
| *Ryder* | *Id.* at 788-791 (App. 350-353) |

Appendix G sets forth the evidence of opposing carriers, as summarized by the Examiners. The further summary and evaluation of this evidence by the Commission appears at 114 M.C.C. 599 (App. 129).

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* Reference to data for "certain test periods" - dates and duration unspecified.